ORANGE COUNTY BOARD OF SUPERVISORS

Agenda Revisions and Supplementals

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified. No new supplemental items will be added to the agenda following close of business on Friday.*

July 27, 2021

PRESENTATIONS (9:00 A.M.)

Chairman Do and Vice Chairman Chaffee will be presenting a resolution commending Orange County Incident Management Team for their dedication to Operation Independence and tireless efforts to vaccinate Orange County residents, workers and vulnerable members

DISCUSSION

16. Revised Title to read:
Sheriff-Coroner - Accept one-time donation of one narcotics detection canine and one ~~hazardous device detection canine~~ *patrol canine* from Orange County Sheriff's Advisory Council ($28,665) - All Districts

19. Deleted

25. Revised Title to read:
John Wayne Airport - Approve contract MA-280-21011787 with BridgeNet International, Inc. dba BridgeNet International, A Tetra Tech Company for maintenance and support of airport noise monitoring system services package, 9/1/21 - 8/31/26 ~~($1,063,938)~~ *($1,148,937.91)*; authorize County Procurement Officer or authorized Deputy to execute contract; and make California Environmental Quality Act and other findings - District 2

36. Revised Title to read:
County Executive Office - Approve grant applications/awards submitted *by Health Care Agency, Probation and John Wayne Airport and retroactive grant applications/awards submitted by Health Care Agency* in 7/27/21 grant report and other actions as recommended - All Districts

PUBLIC HEARING

42. **10:00 A.M. TIME CERTAIN FOR ITEM 42**
County Executive Office - Public Hearing to consider approving 2021 Redistricting Public Participation Plan - All Districts

THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

Items: 4, 16, 25 and 36

Document last updated: 7/22/2021 4:23 PM

ORANGE COUNTY BOARD OF SUPERVISORS

Agenda Revisions and Supplementals

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified.*

No new supplemental items will be added to the agenda following close of business on Friday.

Supplemental Item(s)

S40A. Revised Title to read:
Chairman Do and Supervisor Wagner - Allocate $20 million exclusively for site development of Veterans portion of Mountain Park Cemetery, Anaheim*; and adopt resolution supporting Orange County Veterans Cemetery in Anaheim Hills, and encouraging federal, state and local government support*

S40B. **Chairman Do** - Orange County Human Relations Commission - Appoint Dr. Dorothy O'Neill, Anaheim Hills, for term ending 7/26/23 (Continued from 4/27/21, Item S54M)

S40C. **Chairman Do -** Orange County Veterans Advisory Council - Appoint Marcos Anthony Villa, Laguna Hills, to complete term ending 3/4/22 (Continued from 4/27/21, Item S54A)

S40D. **Chairman Do** - Airport Land Use Commission for Orange County - Reappoint Mark Monin, Laguna Woods, to complete term ending 5/6/24

S40E. **Supervisor Wagner** - Orange County Waste Management Commission - Appoint Laura Thomas, Orange, to complete term ending 1/18/22

S40F. **Supervisor Foley** - Adopt resolution requesting the United States Army Corps of Engineers fund and immediately proceed with Surfside-Sunset Beach Nourishment Project Stage 13 from Anaheim Bay Harbor to Newport Bay in Orange County

S40G. **County Executive Office and Sheriff-Coroner** - Approve revised mutual aid agreement for COVID-19 vaccination effort; authorize Director of Emergency Management Division to execute agreements with partner agencies; and authorize Auditor-Controller to make related payments and reimburse partner agencies for costs incurred - All Districts

SCS2. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - SIGNIFICANT EXPOSURE TO LITIGATION pursuant to Government Code Section 54956.9(d)(2): Number of Cases: One Case

Document last updated: 7/22/2021 4:23 PM

Revision to ASR and/or Attachments

RECEIVED
2021 JUL 22 PM 4:10
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

Date: **July 22, 2021**

To: Clerk of the Board of Supervisors

CC: County Executive Office

From: **Debra Baetz, Social Services Agency**

Re: ASR Control #: 21-000615, Meeting Date 07/27/21, Item No. # 4

Subject: Appointments to the Orange County Child Care and Development Planning Council

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Explanation:

Make edits to the Recommended Actions, as listed below.

☐ Revised Recommended Action(s)

1. List of recommended at large appointments submitted to the Chair:

   a. Reappoint the following nine nominees to the Orange County Child Care and Development Planning Council for an additional two-year term effective August 6, 2021, and ending August 5, 2023: Amanda Selogie, Deanna Parga, Fredrika (Fritzi) Gragg, Janet Anderson-Deusenberry, Kamica Barnes, Kathleen Leary, Maureen Fitzpatrick, Sandra (Sandy) Avzaradel and Teresa (Traci) Stubbler.

   b. Appoint the following two new nominees to the Orange County Child Care and Development Council: Nadhira Hathotuwegama for the term of office effective August 6, 2020, and ending August 5, 2022; and Elizabeth (Lisa) Stambolis for the term of office effective August 6, 2021, and ending August 5, 2023.

☐ Make modifications to the:

☐ Subject ☐ Background Information ☐ Summary ☐ Financial Impact

☐ Revised Attachments (attach revised attachment(s) and redlined copy(s))

Revision to ASR and/or Attachments

RECEIVED
2021 JUL 20 AM 11:05
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

Date: **July 19, 2021**

To: Clerk of the Board of Supervisors

CC: County Executive Office

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of Orange, ou=CEO, email=frank.kim@ocgov.com, c=US
Date: 2021.07.20 10:46:35 -07'00'

From: **Assistant Sheriff Ken Burmood, Sheriff-Coroner Department**

Re: ASR Control #: 21-000554, Meeting Date: 7/27/21, Item No. 16

Subject: Accept Donation of Narcotics and Hazardous Device Detection Canines

Explanation: The Sheriff-Coroner Department would like to update the Subject, Recommended Action, Summary and Background Information of the ASR.

☒ Revised Recommended Action(s)

Accept the one-time donation of one narcotics detection canine and one ~~hazardous device detection canine~~ patrol canine valued at approximately $28,665 from the Orange County Sheriff's Advisory Council.

☒ Make modifications to the:

☒ Subject

Accept Donation of Narcotics and ~~Hazardous Device Detection~~ Patrol Canines

☒ Background Information

The Orange County Sheriff's Advisory Council (OCSAC) was formed in 1979 as a 501(c)(3) California non-profit corporation for the purpose of supporting local law enforcement. The mission of the OCSAC is to "support the law enforcement community of Orange County when the necessary funds needed to support their missions are restricted or limited."

The Sheriff-Coroner Department (Sheriff) serves approximately 3.2 million Orange County residents. The Sheriff has identified a need for an additional narcotics detection and one ~~hazardous device detection~~ patrol canine to provide law enforcement services to the residents of the County. The narcotics detection canine is valued at $17,622, and its cost also includes a one-year warranty. The narcotics detection canine is trained to detect narcotics, or the odor of narcotics, in a wide variety of areas (e.g., indoors, outdoors, open, confined and cluttered spaces) in various environments with various distractions. The patrol canine is valued at $11,043, and its cost also includes a one-year warranty. The patrol canine is used to search for suspects, track and apprehend suspects and search

for physical evidence, in a wide variety of areas (e.g., indoors, outdoors, open, confined and cluttered spaces) in high stress, demanding environments with various distractions. ~~The hazardous device detection canine (K-9 Keto) is valued at $11,043, and its cost also includes a one-year warranty. The hazardous device detection canine is trained to detect bombs and explosive materials, in a wide variety of areas (e.g., indoors, outdoors, open, confined and cluttered spaces) in high stress, demanding environments with various distractions.~~ The canines are also trained in tracking/trailing, obedience and practical agility.

The Board of Supervisors (Board) approved a similar donation from the OCSAC on November 5, 2019, for a narcotics detection canine and one hazardous detection canine. The Sheriff requests Board approval to accept the donation of one narcotics detection and **one patrol** canine with an estimated value of $28,665 from the OCSAC, as noted in the Recommended Action.

☒ Summary

Acceptance of the donation of two canines will allow the Sheriff-Coroner Department to deploy one additional narcotics detection canine and one ~~hazardous device detection~~ **patrol** canine in order to better serve the community.

☒ Financial Impact

Accept the one-time donation of one narcotics detection canine and one ~~hazardous device detection~~ **patrol** canine with an estimated value of $28,665.

ATTACHMENT(S):

☐ Revised Attachments (attach revised attachment(s) and redlined copy(s))

Continuation or Deletion Request

Date: **July 22, 2021**

To: Clerk of the Board of Supervisors

From: **Clayton Chau, Agency Director, Health Care Agency**

Re: ASR Control #: 21-000538, Meeting Date 7/27/21 Agenda Item No. # 19

Subject: **Ratify Agreement for Provision of Vaccine Engagement Program**

☐ Request to continue Agenda Item No. # _____ to the _____ Board Meeting.

Comments:

☒ Request deletion of Agenda Item No. # 19

Comments:

Revision to ASR and/or Attachments

RECEIVED
2021 JUL 20 AM 10: 32
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

Date: 07/19/2021

To: Clerk of the Board of Supervisors

CC: County Executive Office

From: Barry A. Rondinella, Airport Director, John Wayne Airport BAR

Re: ASR Control #: 21-000531, Meeting Date 07/27/2021 , Item No. # 25

Subject: Approve Airport Noise Monitoring System Services Contract

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Explanation:

The total contract amount has increased from $1,063,938 to $1,148,937.91. Please update the Recommended Actions, Current Year Cost, and Background Sections of the Agenda Staff Report as well as replacing Attachment A and C with the ones provided.

☒ Revised Recommended Action(s)

2. Authorize the County Procurement Officer or authorized Deputy to execute a Sole Source contract with Bridgenet International Inc. dba Bridgenet International A Tetra Tech Company, to provide maintenance and support for the airport noise monitoring system services package at John Wayne Airport, effective September 1, 2021, through August 31, 2026, in a total amount not to exceed ~~$1,063,938~~ $1,148,937.91.

☒ Make modifications to the:

☐ Subject ☒ Background Information ☐ Summary ☐ Financial Impact

Current Year Cost: ~~$191,368~~ $276,368

BACKGROUND INFORMATION:

BridgeNet is based in Newport Beach, in close proximity to JWA. The company's core business is acoustics and software support for airports throughout the world.

Envirosuite is a global leader in providing instruments for sound and vibration measurement and providing noise monitoring and flight track solutions. These firms have partnered for many years at airports both in the U.S. and internationally. Together, the BridgeNet/Envirosuite team offers leading technology, stability and the responsiveness to maintain and support the ANMS already in place, with unparalleled customer support. BridgeNet is uniquely qualified to perform the work defined in the Scope of Work for the required hardware and software maintenance and support. JWA seeks Board approval to award the contract to BridgeNet. The contract includes funding for additional services in the amount of ~~$25,000~~ $110,000 for unanticipated services not included in the routine scheduled maintenance.

☒ Revised Attachments (attach revised attachment(s) and redlined copy(s))

Attachment A – Contract MA-281-21011787 with BridgeNet International, Inc. dba BridgeNet International A Tetra Tech Company

Attachment A – Contract MA-281-21011787 with BridgeNet International, Inc. dba BridgeNet International A Tetra Tech Company (Redline)

Attachment C – Contract Summary Form

Attachment C – Contract Summary Form (Redline)

CONTRACT MA-280-21011787

FOR

AIRPORT NOISE MONITORING SYSTEMS SERVICES

BETWEEN

JOHN WAYNE AIRPORT

AND

BRIDGENET INTERNATIONAL, INC. DBA BRIDGENET INTERNATIONAL A TETRA TECH COMPANY

JOHN WAYNE AIRPORT
ORANGE COUNTY

CONTRACT MA-280-21011787
WITH
BRIDGENET INTERNATIONAL INC. DBA
BRIDGENET INTERNATIONAL A TETRA TECH COMPANY
FOR
AIRPORT NOISE MONITORING SYSTEMS SERVICES

This Contract MA-280-21011787 for Airport Noise Monitoring Systems Services ("Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; (hereinafter referred to as "County") and BridgeNet International, Inc. dba BridgeNet International, A Tetra Tech Company, with a place of business at 20201 SW Birch Street, Ste. 250 Newport Beach, CA 92660 (hereinafter referred to as "Contractor"), with County and Contractor sometimes referred to as "Party" or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work
Attachment B – Payment/Compensation
Attachment C – Staffing Plan

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Airport Noise Monitoring System Services under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide Airport Noise Monitoring System Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and

WHEREAS, the County Board of Supervisors has authorized the Deputy Purchasing Agent or designee to enter into a Contract for Service Description with the Contractor;

NOW, **THEREFORE**, the Parties mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLES

General Terms and Conditions:

A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County

Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

Compliance with Nondiscrimination Requirements: During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this Contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);

6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations

and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Requirements:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance

requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2. Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com)**. It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	**Minimum Limits**
Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	$1,000,000 per occurrence
Technology Errors & Omissions	$1,000,000 per occurrence $2,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, employees and agents*** as Additional Insureds, or provide blanket coverage, which will state ***As Required By Written Contract***.

2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees and agents*** or provide blanket coverage, which will state ***As Required By Written Contract***.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial General Liability policy shall contain a "Severability of Interests" clause also known as a "Separation of Insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Freight:** Reserved

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Airport Noise Monitoring Systems Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".

2. **Term of Contract:** This Contract shall commence on September 1, 2021 and shall continue through August 31, 2026, unless otherwise terminated by County.

3. **Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

   If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment. Said amendment shall be issued by the County assigned Deputy Purchasing Agent, shall require the mutual consent of all parties, and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work as set forth in this Contract.

4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.

5. **Bond Requirements:** Contractor shall furnish a Faithful Performance Bond equal to 10% of the Contract amount if the total [bid] exceeds $25,000 pursuant to Section 20473 of Public Contract Code.
   i. **Faithful Performance Bond:** Contractor shall furnish a surety bond to guarantee faithful performance. Said bond shall be for one hundred percent (10%) of the total contract amount.

Said bond shall be submitted upon the forms provided by the County and duly executed by Contractor and a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California and registered with County. Contractor shall pay all bond premiums, costs, and incidentals.

Said bonds shall be secured from an admitted surety company authorized to conduct surety insurance in California and satisfactory to County Risk Management and Office of the County Counsel. Should any surety at any time be unsatisfactory to County, or should any bond become insufficient, Contractor shall be given notice to that effect. No further payment shall be deemed due or shall be made under Contract until a new surety and/or bond is furnished to the County.

6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

   1) Terminate the Contract immediately, pursuant to Section K herein;

   2) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

   3) Discontinue payment to the Contactor for and during the period in which the Contractor is in breach; and

   4) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

7. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

   The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

   This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

8. **Conflict of Interest – Contractor's Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.

9. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

10. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

    The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

11. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

12. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.

13. **County Branding Requirement – Publicity, Literature, Advertisements and Social Media:**

    1. County owns all rights to the name, logos, and symbols of County. The use/and/or reproduction of County's name, logos, or symbols for any purpose, including commercial advertisement, promotional purposes, announcements, displays, or press releases, without County's prior written consent is expressly prohibited.

    2. Contractor may develop and publish information related to this Contract where all of the following conditions are satisfied:

        a. Administrator/assigned Deputy Purchasing Agent provides its written approval of the content and publication of the information at least 30 days prior to Contractor publishing the information, unless a different timeframe for approval is agreed upon to the Administrator/assigned Deputy Purchasing Agent;

        b. Unless directed otherwise by Administrator/assigned Deputy Purchasing Agent, the information includes a statement that the program, wholly or in part, is funded through County, State and Federal government funds [funds identified as applicable];

        c. The information does not give the appearance that the County, its officers, or employees or agencies endorse:

            a. any commercial product or service; and,

b. any product or service provided by Contractor, unless approved in writing by Administrator/assigned Deputy Purchasing Agent; and,

d. If Contractor uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) to publish information related to this Contract, Contractor shall develop social media policies and procedures and have them available to the Administrator/assigned Deputy Purchasing Agent. Contractor shall comply with County Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Contract. The policy is available on the Internet at http://www.ocgov.com/gov/ceo/cio/govpolicies.

14. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

15. **Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

16. **Disputes – Contract:** The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:

    1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

    2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

    Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

    Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

17. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

    1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

    2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:

        a. The dangers of drug abuse in the workplace;
        b. The organization's policy of maintaining a drug-free workplace;

        c. Any available counseling, rehabilitation and employee assistance programs; and

        d. Penalties that may be imposed upon employees for drug abuse violations.

    3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:

        a. Will receive a copy of the company's drug-free policy statement; and

        b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

    Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

    1. The Contractor has made false certification, or

    2. The Contractor violates the certification by failing to carry out the requirements as noted above.

18. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays $600 or more or with whom the County enters into a contract for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

    The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

    The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Employer_Services.htm.

19. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

20. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

    Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

    Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

21. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

22. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof**.**

23. **Inventions:** If any discovery or invention arises or is developed in the course of, or as a result of work performed under this Contract, the Contractor shall refer the discovery or invention to the County.

24. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor:	BridgeNet International, Inc. dba BridgeNet International, A Tetra Tech Co. Attn: Mark Karmelich 20201 SW Birch St. Ste. 250 Newport Beach, CA 92626 Phone: (949) 250-1222 Email: pauld@airportnetwork.com
County's Project Manager:	JWA/Airport Access/Noise Attn: Nikolas Gaskins 3160 Airway Avenue Costa Mesa, CA 92626 Phone: (949) 252-5188 Email: ngaskins@ocair.com
cc:	JWA/Procurement Attn: Maria Albelo, County DPA 3160 Airway Avenue Costa Mesa, CA 92626 Phone: (949) 252-5175 Email: malbelo@ocair.com

26. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

27. **Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

    The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3)

business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

28. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by County unless otherwise agreed to by both Parties.

29. **Software Documentation:** The Contractor agrees to provide to the County the County-designated number of all manuals and other associated printed materials and updated versions thereof, which are necessary or useful to the County in its use of the equipment or software provided hereunder. The County will designate the number of copies for production use and the number of copies for disaster recovery purposes and will provide this information to the Contractor.

    If additional copies of such documentation are required, the Contractor will provide such manuals at the request of the County. The requesting agency/department shall be billed for the manuals and any associated costs thereto by invoice. The Contractor agrees to provide such additional manuals at prices not in excess of charges made by the Contractor to its best customers for similar publications.

    The Contractor further agrees that the County may reproduce such manuals for its own use in maintaining the equipment or software provided hereunder. The County agrees to include the Contractor's copyright notice on any such documentation reproduced in accordance with copyright instructions to be provided by the Contractor.

30. **Software – Future Releases:** If improvement, upgraded, or enhancement versions of any software product under this Contract are developed by the Contractor and are made available to other licensees, they will be made available to the County at the County's option, provided such versions are operable on the same computer hardware configuration. The charge for such upgrading to the later version of the software will be the difference between the price established by the Contractor for the later version and the price specified herein or the then prevailing prices of the currently installed version.

31. **Software Licence:** The Contractor hereby grants to the County of Orange and the County accepts from the Contractor, subject to the terms and conditions of this agreement, a non-exclusive, non-transferable license to use the software products list in this agreement, hereinafter referred to as "software products." The license granted above authorizes the County to use the software products in machine-readable form on a single computer system, designed in writing by the County to the Contractor, provided that if the designated CPU is inoperative due to malfunction, license herein granted shall be temporarily extended to authorize the County to use the software products in machine-readable form on any other County CPU until the designated CPU is returned to operation. By prior written notice to the Contractor the County may redesignate the CPU in which the software products are to be used and must do so if the redesignation is permanent.

    When encryption/CPU ID authorization codes are required to operate the software products, the Contractor will provide all codes to the County with shipment of the software. In the case of an inoperative CPU, as defined above, Contractor will provide a temporary encryption/CPU ID authorization code to the County for use on a temporarily authorized CPU until the designated CPU is returned to operation. When changes in designated CPUs occur, the Contractor will issue to the County

within 24 hours of notification a temporary encryption/ID authorization code for use on the newly designated CPU until such time a permanent code is assigned.

32. **State Funds – Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the State of California, the County of Orange, or a private auditing firm hired by the State or the County. The State or County shall provide reasonable notice of such audit.

33. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

    In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

34. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

35. **Waivers – Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date first above written.

BRIDGENET INTERNATIONAL INC. DBA BRIDGENET INTERNATIONAL A TETRA TECH COMPANY*

Signature	Name	Title	Date
Mark Kormelich	Mark Kormelich	President	6/29/21
Paul Dunkelberger	Paul Dunkelberger	CEO/CFO	6/29/21

COUNTY OF ORANGE, A political subdivision of the State of California
COUNTY AUTHORIZED SIGNATURE:

Signature	Name	Title	Date
		Deputy Purchasing Agent	

APPROVED AS TO FORM:
County Counsel

By: _____
Deputy

Name: Mark Sanchez

Date: 7-19-2021

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

ATTACHMENT A
SCOPE OF WORK

I. Overview

John Wayne Airport (JWA) is owned and operated by the County of Orange; it is the only commercial airport in Orange County, California. JWA serves a population of approximately three million people in 34 cities and the unincorporated areas of Orange County. Ten commercial airlines and two commuter operators provide commercial passenger service at JWA with nonstop service to more than 30 destinations in the United States, Canada, and Mexico. In 2019 and prior to the pandemic, JWA served over 10.6 million passengers and had a total of 301,098 operations. Of those operations, 68% were generated by privately owned and operated general aviation aircraft. Two all-cargo carriers operate at JWA, and they transported approximately 15,793 tons in 2019.

JWA has one of the most stringent aircraft access and noise monitoring programs in the United States, and, perhaps, the world. Commercial airlines and cargo operators are regulated by the Phase 2 Commercial Airline Access Plan & Regulation (Access Plan). The Access Plan places restrictions on operational capacity, hours of operations, and noise levels. General Aviation operations are permitted 24 hours daily subject to compliance with the daytime noise limits and the more restrictive nighttime noise limits, as documented in the General Aviation Noise Ordinance (GANO).
In order for the JWA Access & Noise Office (ANO) to enforce the operational and noise restrictions, they utilize a state-of-the-art Airport Noise Monitoring System (ANMS). The ANMS is a fully integrated system that collects and correlates noise, flight track, and complaint data.

The ANMS consists of four primary components:

A. Noise Monitoring Station (NMS) Hardware/Airport Noise and Operations Management System (ANOMS) Software
B. WebTrak Public Flight Tracking System Software (WebTrak)
C. Viewpoint Complaint Collection and Management Service (Viewpoint)
D. Detailed Noise Event Reports Service

II. Maintenance and Support Services

The existing ANMS installation was completed in 2015 and is a critical part of the noise management program. The system must be capable of extensive report generation and analysis of flight tracks, noise levels, and system checks. As part of the existing ANMS, the ANOMS software serves to provide the airport with a wide range of report and analysis capabilities. However, the Access Plan and GANO includes a series of complex airline access rules, commercial and general aviation noise limits, curfews, and other reporting requirements. Specialized software, unique to JWA, was developed by BridgeNet International to enforce the rules and regulations. It was given the name "Access/GANO."

For purposes of this contract, the term "ANMS" will refer to the four primary components listed above. "Access/GANO"' will refer to the separate software that acquires data from the ANMS, the airlines, and other sources, which processes those reports that deal specifically with compliance with the Access Plan and the GANO. As such, the ANMS will provide access to and interface with the Access/GANO software.

It is critically important that the contractor works closely and cooperatively with the Access/GANO software. The contractor will ensure seamless acquisition of NMS data for Access/GANO processing and reporting. JWA will assume that the same functionality and settings of the current contract will be carried forward into the new contract.

Support and maintenance provided by the contractor will include continuous monitoring of the performance of the ANMS hardware and taking action to remedy any disturbance. The contractor will provide all service level support – JWA ANO staff will never have to visit a NMS location to perform

any investigation or repair. For Service Level (SL) 1 and 2 issues, 24 hours per day; seven days per week; 365 days per year. The contractor's project manager will meet quarterly with a designated member of the JWA ANO for the entire length of the contract.

The contractor will provide uptime to achieve a 99.9% service level availability. Further, the ANMS availability shall include the following:

1. ANOMS server: 99.9% reliability. All newly received data is correlated with existing data in real-time or near real-time, and backups are performed online to eliminate disruptions to ANOMS.
2. Flight tracking data: 99.9% reliability. All flight track data is available in ANOMS shortly after being recorded.
3. Noise monitor data: 99.9% reliability. Data is sent to the ANOMS server on a fixed short interval via cellular modem communication.
4. Complaint data: 99.9% reliability. All complaint data is available in ANOMS instantaneously after being submitted by a complainant.

The following subsections describe each of the primary components of the ANMS that the contractor shall provide continued maintenance and support services for. It is a requirement that the ANMS be easy to operate and capable of easy updates and modifications. Furthermore, the Airport assumes the same functionality and settings of the current contract and system forwarding into the new maintenance and support contract.

A. Noise Monitoring Station (NMS) Hardware/Airport Noise and Operations Management System (ANOMS) Software

The Noise Monitoring Station (NMS) hardware is installed at ten permanent locations around JWA. Additionally, one spare NMS hardware unit is stored at the JWA ANO office. The NMS hardware delivers reliable real-time data measurements to a centralized computer system and works seamlessly with ANOMS. The NMSs have software functionality that allows for configuration of the NMSs remotely, and that produces charts and reports on NMS status and performance.

The NMSs will meet the airport noise standards required within State of California Title 21. All calibrators used for checking the acoustical sensitivity of a microphone should conform to the Class 1 requirements of IEC 60942:2017. All sound level meters/microphones should comply with Class 1 requirements of IEC 61672-1:2002.

Each NMS will be equipped with:

1. A sound level meter with display.
2. Existing poles and microphone access.
3. Cellular antenna and modem.
4. Backup battery.
5. A lockable keyed alike, weatherproof security case.

Each NMS will be capable of:

1. Acoustic signal processing.
2. Measuring sound pressure levels in A and C weighted frequency over a range from 30 decibels (dB) to 120 dB.
3. Real-time data transfer.
4. Self–calibration and external calibration.
5. Two-way communication.
6. Real-time community interface.
7. Measuring and recording 1/3 octave band and spectral data.

8. User-friendly command selection and adjustment of discrimination parameters for individual NMSs.
9. Connecting to the mobile maintenance application.
10. Each NMS shall provide battery backup of sufficient capacity to allow full operation of the NMS for at least three days. Batteries should be checked during annual preventative maintenance and replaced as required.
11. Automatic retransfer of data when errors or data loss are identified. If it cannot wholly and successfully transfer data, it will provide a warning message. In the event of a power, or network interruption, each NMS, will be capable of collecting and storing additional data for a minimum 30 days, without overwriting any data not sent to the ANOMS server.

The contractor will provide all supplies necessary to provide continued maintenance and support services of the NMSs hardware. Supplies include but are not limited to windscreens, backup batteries, sound level meters, microphones, microphone cables (may be custom), cellular modems, etc.

The contractor should perform annual preventative maintenance for each of the ten NMS locations. The annual preventative maintenance will include the following at each NMS location: visual inspection, calibration, replacing hardware if needed, establishing network connection prior to leaving site, cleaning site, replacing backup batteries if needed, checking cellular modem connectivity, etc.

The annual preventative maintenance schedule should be coordinated with JWA ANO staff and should occur at each NMS prior to the previous calendar year date of completion. An annual preventive maintenance report and letter should be delivered within 7 business days from the completion of the annual preventative maintenance.

The contractor will provide live telephone technical support from Monday through Friday during the hours of 8:00 a.m. to 5:00 p.m. local time (PST). The contractor will describe response times for fixing system problems and JWA expects to apply penalties for failure to meet these response times.

JWA has as its goal, zero downtime. All necessary steps shall be made to achieve the least amount of time during which component is inoperable. JWA requires that any major system failure that results in the failure to collect and store noise or flight tracking data will have a response time of less than 24 hours or one business day.

Within 24 hours of resolving NMS failures, the contractor shall notify the ANO that the failure has been resolved and will include a brief description of the action taken to resolve the failure. The contractor will also notify the ANO within 4 hours of any condition(s) that have developed, or that might develop that might affect the proper operation of the ANMS.

The contractor shall provide Airport Noise and Operations Management System (ANOMS) as the ANMS software. ANOMS is an integrated software solution for monitoring, analyzing and reporting aircraft noise and collecting flight tracking data. ANOMS will have a straightforward graphical user interface (GUI) that supports streamlined and efficient workflows.

ANOMS operates on an off-site facilities server where data access is provided through the Internet. This has numerous advantages with respect to hardware, software, and database maintenance: (1) the ability for the contractor to maintain and repair hardware and database at its own site rather than traveling to JWA; (2) the shift of responsibility for server maintenance and operation to the contractor; and (3) the faster and more efficient re-loading and/or restoring of very large server databases.

Data Collection, Computation, and Compilation

The types of data collected and interpreted by the ANOMS software shall include:
1. Aircraft operations and flight track information data.

2. NMS data.
3. Noise event data.
4. Audio playback feature with a retention of one calendar year.
5. Community noise complaint data.
6. Meteorological data.
7. Mathematical and statistical operations.
8. Software features.

User Interface

ANOMS user-friendly interface features shall include:
1. User-defined query set-up for report generation.
2. Correlations between different data sets.
3. Zone, corridor and gate penetration analysis.
4. Track density analysis.
5. Point of Closest Approach (PCA) analysis.
6. Flight track screen display, filtering, sorting and coloring by airport, operation, etc.
7. Flight track filter.
8. Altitude profile analysis.
9. Automated noise reporter's response.
10. Exporting data/image/map layers.
11. Displaying noise monitors, noise reporters, flight track and any other georeferenced location on a map.
12. Base maps and map detail layers.
13. A replay of flight tracks, noise levels, noise events with video capture and export.
14. Custom and standard reports.

B. Webtrak Public Flight Tracking System Software (Webtrak)

The contractor will provide the WebTrak Public Flight Tracking System Software (Webtrak); a fully-hosted web-based flight track viewer and reporting complaints of aircraft noise events. WebTrak delivers a better experience for stakeholders and minimizes errors that the noise office needs to review and correct. WebTrak is unique in the industry by giving its users the same data used by the airport and linking reported aircraft events directly to ANOMS. WebTrak is a streamlined system that is fully integrated with the ANOMS used by JWA.

WebTrak simultaneously provides a self-service channel to report an aircraft noise event complaint and enables the community to see actual flight tracks and noise levels in a way that is easy to understand, and which facilitates investigation of their noise concern. It is common for communities surrounding airports to question the information that the airport is publishing regarding noise exposure and what is being done to control noise exposure. With WebTrak, the neighboring communities can see what is going on and how adherence to noise abatement procedures are being monitored using the same data that the JWA ANO uses.

The contractor will provide all associated continued maintenance and support services as part of the Webtrak solution to JWA. The Webtrak solution will be customizable to include JWA specific color schemes, wordmarks, logos, etc. to comply with JWA's style guide, which can be provided.

Webtrak is comprised of the following primary features:
1. Ability to review near real-time flight data and up to 3 months of historical flight track data.
2. Standard and satellite map layers available for viewer's choice.
3. Aircraft identification with icons indicating jet, propeller and helicopter.
4. Flight information tags with aircraft type (FAA registry), altitude, origin and destination, and flight number.
5. Color coding of aircraft operations in terminal airspace (arrival, departure, overflight).

6. Address locator tool enabling residents to pinpoint location in airport vicinity.
    i. Address lookup on the map to automatically locate position of interest
    ii. Ability to select and view specific flights
    iii. Check the point of closest approach of a flight and view graphically
7. Zoom, re-center and pan map functions
8. Fast-forward function and ability to adjust flight track animation speed of time period queried.
9. Messaging window or display.
10. Direct submission of reported aircraft noise event complaint information
11. Labeled one-second noise readings at each NMS.
12. Personal data collection.
    i. Control over the data collected
    ii. Presentation and acceptance of personal data collection
    iii. Anonymous complaint collection
13. Delaying of data to meet security requirements upon JWA request
    i. Removal of flights (such as military and police) to meet security requirements
    ii. Removal of flight information (for example call sign and tail number) for privacy purposes
    iii. Airport control over removal of individual flights for operational reasons
14. Overlay of quarterly and annual noise contours.
15. Overlay of flight track procedures.
16. Overlay of weather conditions.

C. Viewpoint Complaint Collection and Management Services (Viewpoint)

The contractor will provide the Viewpoint Complaint Collection and Management Service (Viewpoint). Viewpoint is a streamlined and efficient complaint management system that is fully integrated with ANOMS. It makes it easy for the community to lodge complaints and inquiries in a variety of modes while ensuring that JWA can efficiently manage the incoming data.

The Viewpoint approach delivers a better experience for the complainant and minimizes errors that the noise office needs to review and correct, significantly reducing workload. The most important part of a modern complaint management system is the ability to effectively handle complaints arriving from new channels as well as integrate with current systems in use. Viewpoint is unique in the industry, having a two-way integration with the ANOMS software. The user is able to effectively link new complaints with records in the ANOMS database as well as gain insight into both current and historical trends.

The contractor will provide all associated continued maintenance and support services as part of the Viewpoint solution to JWA.

<u>Community Opinion from Multi-Channel Collection Services</u>

Viewpoint will include the option for any or all the following collection channels:

1. Mobile phone app (Android and Apple iOS)
   The mobile phone app will be designed to provide a "low friction" method of submitting complaints for the community. Contact and name details are remembered and automatically completed. This will ensure a high degree of consistency in submitted complaints. The mobile phone app also makes uses of the device location to detect and set location.
2. Application Programming Interface (API) option for app compatibility
   The mobile phone app will work with a standardized API. App developers can use this API to deliver complaints into Viewpoint with approval from the Airport. Importantly, the API provides a return ticket for each successfully submitted complaint. The ticket can be cryptographically verified to prove successful submission of complaints via the API. Complainants claiming the Airport has lost complaints can be required to produce the tickets

as proof of successful submission. Viewpoint can rapidly use the provided ticket to verify submission and allow the user to look it up.
3. Community web complaint form
4. Web-based manual entry form for John Wayne Airport staff
5. Interactive telephone voice response system, including automatic phone call transcription for efficient review in ANOMS, for up to 300 calls per month (with surges to 500 calls per month for two months in each year of service)

Insight Dashboard

Viewpoint will include a web-based stakeholder dashboard with interactive heat maps and charts to easily access summary information about how complaints are trending. The data displayed will be based on preset periods such as last month, last year, and includes user-defined periods. The data will cover all complaints in the ANOMS database.

1. The dashboard map will include postcode trends, a heat map, and a cluster map.
2. The dashboard will include several information displays that allow the current complaints situation to be explored without the need to generate and review reports.
3. Key insight will include number of callers, number of new callers, number of callers per postcode, type of disturbances, top individuals, contact method analysis, and top locations.

Identity Management

Careful identity management is a key component of efficiently managing complaints when many channels for complaint submission are available. Maintaining the link to a single individual in the ANOMS system is important to gain the right insights into complaints data.

Viewpoint will look at the complainant level and the history of the caller. When a new complaint is submitted, it will link to the caller in ANOMS and display the history of the caller and concerns.

When merging and correction is necessary, Viewpoint is designed to provide highly effective merging and matching. The workflows are designed so that the user is efficiently working at the complainant level to review contact details and enter complainants into Viewpoint. For example, if a complainant has submitted ten complaints with the same contact details, Viewpoint automatically matches them to an existing complainant or groups them together so that the user only reviews one set of information to add a new complainant or match to the right complainant.

Viewpoint will deliver improvements in tracking complainant identity and efficient ways of working with complaints including:

1. Workflow improvements designed to reduce the analysis time reviewing multi-channel volumes of submissions
2. Minimizing the opportunities for complainants to enter varying contact details by auto-completion, caller id, mistyped information, etc.

D. Detailed Noise Event Reports Service

The contractor will provide the Detailed Noise Event Reports Service. The service automatically produces and delivers reports to a publicly accessible web folder. The format and content of the existing reports will be unchanged. The reports will be pushed from ANOMS directly to a web folder provided by contractor.

The reports will be provided one month and one week after the end of the month scheduled to be published, unless otherwise directed, to ensure all flight matching processing has been concluded by the JWA ANO and be configurable beyond that to allow for delayed loading of data and any needed corrections. The reports published to the web folder will be retained and made available for public

access indefinitely, while the service is operating. These reports do not change after publication but can be reissued at any time on request if corrections are required after publication.
The contractor will provide all associated continued maintenance and support services as part of the Detailed Noise Event Reports Service to JWA.

ATTACHMENT B
PAYMENT/COMPENSATION

A. **Compensation:** This is a firm-fixed fee Contract between the County and Contractor for Airport Noise Monitoring Systems Services as set forth in Attachment A, "Scope of Work.
The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions.**

B. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

Total Contract Amount Not To Exceed: **$1,148,937.91**

Contract Term	Monthly Amount	Yearly Amount
Year 1 - Sept 1, 2021 thru Aug 31, 2022	$16,636.72	$199,640.64
Year 2 - Sept 1, 2022 thru Aug 31, 2023	$16,969.45	$203,633.45
Year 3 - Sept 1, 2023 thru Aug 31, 2024	$17,308.84	$207,706.12
Year 4 - Sept 1, 2024 thru Aug 31, 2025	$17,655.02	$211,860.24
Year 5 - Sept 1, 2025 thru Aug 31, 2026	$18,008.12	$216,097.45
*Additional Service		$110,000.00

*Additional Service – unanticipated services not included in the routine scheduled maintenance requested by County Project Manager in writing.

C. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications, and parking while on County sites during the performance of work and services under this Contract.

D. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

E. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.

F. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

A. Contractor's name and address
B. Contractor's remittance address, if different from 1 above
C. Contractor's Federal Taxpayer ID Number
D. Name of County Agency/Department
E. Delivery/service address
F. Master Agreement (MA) or Purchase Order (PO) number
G. Agency/Department's Account Number
H. Date of invoice and invoice number
I. Product/service description, quantity, and prices
J. Sales tax, if applicable
K. Freight/delivery charges, if applicable
L. Total

Invoices and support documentation are to be forwarded to **(not both):**

Mailed to John Wayne Airport
Attention: Accounts Payable
3160 Airway Avenue
Costa Mesa, CA 92626

OR

Emailed to AccountsPayable@ocair.com

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via and EFT Authorization Form. To request a form, please contact the DPA.

ATTACHMENT C
STAFFING PLAN

1) **Key Personnel**

Name	Classification /Designation	Licenses/Certifications (Include license/ certification number)	Years of Experience	Length of Time with Firm
Mark Karmelich	President		30	5
Bradley Bolton	Manager, Acoustics		6	4
Paul Dunholter	Founder & CEO	Professional Civil Engineer, California No. C48998	40	23
Corby DeMeis	Acoustics Engr.		3	2
Robert Milton	Manager, Software		20	16

Contractor understands that the individuals represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by County. Substitution of Contractor's Key Personnel shall be allowed only with prior written approval of County's Project Manager.

Contractor may reserve the right to involve other Contractor personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to County written approval. County reserves the right to have any of Contractor personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any Contractor personnel.

2) **Subcontractor(s)**

Listed below are subcontractor(s) anticipated by Contractor to perform services specified in Attachment A. Substitution or addition of Contractor's subcontractors in any given project function shall be allowed only with prior written approval of County's Project Manager.

Company Name & Address	Contact Name and Telephone Number	Project Function
Envirosuite 2100 #214-53, Palomar Airport Road, Carlsbad CA 92011	James Clinnin 310-350-8676	Project Manager
Envirosuite 2330 East Bidwell, Suite 210, Folsom, California 95630	Monica Singh 916-265-7702	Service Manager, Level 2 Support

CONTRACT MA-280-21011787

FOR

AIRPORT NOISE MONITORING SYSTEMS SERVICES

BETWEEN

JOHN WAYNE AIRPORT

AND

BRIDGENET INTERNATIONAL, INC. DBA BRIDGENET INTERNATIONAL A TETRA TECH COMPANY

JOHN WAYNE AIRPORT
ORANGE COUNTY

CONTRACT MA-280-21011787
WITH
BRIDGENET INTERNATIONAL INC. DBA
BRIDGENET INTERNATIONAL A TETRA TECH COMPANY
FOR
AIRPORT NOISE MONITORING SYSTEMS SERVICES

This Contract MA-280-21011787 for Airport Noise Monitoring Systems Services ("Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; (hereinafter referred to as "County") and BridgeNet International, Inc. dba BridgeNet International, A Tetra Tech Company, with a place of business at 20201 SW Birch Street, Ste. 250 Newport Beach, CA 92660 (hereinafter referred to as "Contractor"), with County and Contractor sometimes referred to as "Party" or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work
Attachment B – Payment/Compensation
Attachment C – Staffing Plan

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Airport Noise Monitoring System Services under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide Airport Noise Monitoring System Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and

WHEREAS, the County Board of Supervisors has authorized the Deputy Purchasing Agent or designee to enter into a Contract for Service Description with the Contractor;

NOW, **THEREFORE**, the Parties mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLES

General Terms and Conditions:

A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County

Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

Compliance with Nondiscrimination Requirements: During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this Contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);

6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations

and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Requirements:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance

requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2. Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com)**. It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	**Minimum Limits**
Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	$1,000,000 per occurrence
Technology Errors & Omissions	$1,000,000 per occurrence $2,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, employees and agents*** as Additional Insureds, or provide blanket coverage, which will state ***As Required By Written Contract***.

2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees and agents*** or provide blanket coverage, which will state ***As Required By Written Contract***.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial General Liability policy shall contain a "Severability of Interests" clause also known as a "Separation of Insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Freight:** Reserved

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Airport Noise Monitoring Systems Services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".

2. **Term of Contract:** This Contract shall commence on September 1, 2021 and shall continue through August 31, 2026, unless otherwise terminated by County.

3. **Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

   If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment. Said amendment shall be issued by the County assigned Deputy Purchasing Agent, shall require the mutual consent of all parties, and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work as set forth in this Contract.

4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.

5. **Bond Requirements:** Contractor shall furnish a Faithful Performance Bond equal to 10% of the Contract amount.
   i. **Faithful Performance Bond:** Contractor shall furnish a surety bond to guarantee faithful performance. Said bond shall be for ten percent (10%) of the total contract amount.

Said bond shall be submitted upon the forms provided by the County and duly executed by Contractor and a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California and registered with County. Contractor shall pay all bond premiums, costs, and incidentals.

Said bonds shall be secured from an admitted surety company authorized to conduct surety insurance in California and satisfactory to County Risk Management and Office of the County Counsel. Should any surety at any time be unsatisfactory to County, or should any bond become insufficient, Contractor shall be given notice to that effect. No further payment shall be deemed due or shall be made under Contract until a new surety and/or bond is furnished to the County.

6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

   1) Terminate the Contract immediately, pursuant to Section K herein;

   2) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

   3) Discontinue payment to the Contactor for and during the period in which the Contractor is in breach; and

   4) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

7. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

   The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

   This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

8. **Conflict of Interest – Contractor's Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.

9. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

10. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

    The Contractor's Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

11. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

12. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.

13. **County Branding Requirement – Publicity, Literature, Advertisements and Social Media:**

    1. County owns all rights to the name, logos, and symbols of County. The use/and/or reproduction of County's name, logos, or symbols for any purpose, including commercial advertisement, promotional purposes, announcements, displays, or press releases, without County's prior written consent is expressly prohibited.

    2. Contractor may develop and publish information related to this Contract where all of the following conditions are satisfied:

        a. Administrator/assigned Deputy Purchasing Agent provides its written approval of the content and publication of the information at least 30 days prior to Contractor publishing the information, unless a different timeframe for approval is agreed upon to the Administrator/assigned Deputy Purchasing Agent;

        b. Unless directed otherwise by Administrator/assigned Deputy Purchasing Agent, the information includes a statement that the program, wholly or in part, is funded through County, State and Federal government funds [funds identified as applicable];

        c. The information does not give the appearance that the County, its officers, or employees or agencies endorse:

            a. any commercial product or service; and,

b. any product or service provided by Contractor, unless approved in writing by Administrator/assigned Deputy Purchasing Agent; and,

d. If Contractor uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) to publish information related to this Contract, Contractor shall develop social media policies and procedures and have them available to the Administrator/assigned Deputy Purchasing Agent. Contractor shall comply with County Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Contract. The policy is available on the Internet at http://www.ocgov.com/gov/ceo/cio/govpolicies.

14. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

15. **Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

16. **Disputes – Contract:** The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:

    1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

    2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

    Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

    Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

17. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

    1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

    2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:

        a. The dangers of drug abuse in the workplace;
        b. The organization's policy of maintaining a drug-free workplace;

        c. Any available counseling, rehabilitation and employee assistance programs; and

        d. Penalties that may be imposed upon employees for drug abuse violations.

    3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:

        a. Will receive a copy of the company's drug-free policy statement; and

        b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

    Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

    1. The Contractor has made false certification, or

    2. The Contractor violates the certification by failing to carry out the requirements as noted above.

18. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays $600 or more or with whom the County enters into a contract for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

    The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

    The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Employer_Services.htm.

19. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

20. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

    Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

    Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

21. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

22. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof**.**

23. **Inventions:** If any discovery or invention arises or is developed in the course of, or as a result of work performed under this Contract, the Contractor shall refer the discovery or invention to the County.

24. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor:	BridgeNet International, Inc. dba BridgeNet International, A Tetra Tech Co. Attn: Mark Karmelich 20201 SW Birch St. Ste. 250 Newport Beach, CA 92626 Phone: (949) 250-1222 Email: pauld@airportnetwork.com
County's Project Manager:	JWA/Airport Access/Noise Attn: Nikolas Gaskins 3160 Airway Avenue Costa Mesa, CA 92626 Phone: (949) 252-5188 Email: ngaskins@ocair.com
cc:	JWA/Procurement Attn: Maria Albelo, County DPA 3160 Airway Avenue Costa Mesa, CA 92626 Phone: (949) 252-5175 Email: malbelo@ocair.com

26. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

27. **Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

    The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3)

business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

28. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by County unless otherwise agreed to by both Parties.

29. **Software Documentation:** The Contractor agrees to provide to the County the County-designated number of all manuals and other associated printed materials and updated versions thereof, which are necessary or useful to the County in its use of the equipment or software provided hereunder. The County will designate the number of copies for production use and the number of copies for disaster recovery purposes and will provide this information to the Contractor.

    If additional copies of such documentation are required, the Contractor will provide such manuals at the request of the County. The requesting agency/department shall be billed for the manuals and any associated costs thereto by invoice. The Contractor agrees to provide such additional manuals at prices not in excess of charges made by the Contractor to its best customers for similar publications.

    The Contractor further agrees that the County may reproduce such manuals for its own use in maintaining the equipment or software provided hereunder. The County agrees to include the Contractor's copyright notice on any such documentation reproduced in accordance with copyright instructions to be provided by the Contractor.

30. **Software – Future Releases:** If improvement, upgraded, or enhancement versions of any software product under this Contract are developed by the Contractor and are made available to other licensees, they will be made available to the County at the County's option, provided such versions are operable on the same computer hardware configuration. The charge for such upgrading to the later version of the software will be the difference between the price established by the Contractor for the later version and the price specified herein or the then prevailing prices of the currently installed version.

31. **Software Licence:** The Contractor hereby grants to the County of Orange and the County accepts from the Contractor, subject to the terms and conditions of this agreement, a non-exclusive, non-transferable license to use the software products list in this agreement, hereinafter referred to as "software products." The license granted above authorizes the County to use the software products in machine-readable form on a single computer system, designed in writing by the County to the Contractor, provided that if the designated CPU is inoperative due to malfunction, license herein granted shall be temporarily extended to authorize the County to use the software products in machine-readable form on any other County CPU until the designated CPU is returned to operation. By prior written notice to the Contractor the County may redesignate the CPU in which the software products are to be used and must do so if the redesignation is permanent.

    When encryption/CPU ID authorization codes are required to operate the software products, the Contractor will provide all codes to the County with shipment of the software. In the case of an inoperative CPU, as defined above, Contractor will provide a temporary encryption/CPU ID authorization code to the County for use on a temporarily authorized CPU until the designated CPU is returned to operation. When changes in designated CPUs occur, the Contractor will issue to the County

within 24 hours of notification a temporary encryption/ID authorization code for use on the newly designated CPU until such time a permanent code is assigned.

32. **State Funds – Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the State of California, the County of Orange, or a private auditing firm hired by the State or the County. The State or County shall provide reasonable notice of such audit.

33. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

    In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

34. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

35. **Waivers – Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date first above written.

BRIDGENET INTERNATIONAL, INC. DBA BRIDGENET INTERNATIONAL, A TETRA TECH COMPANY*

Signature	Name	Title	Date

Signature	Name	Title	Date

COUNTY OF ORANGE, A political subdivision of the State of California
COUNTY AUTHORIZED SIGNATURE:

Deputy Purchasing Agent

Signature	Name	Title	Date

APPROVED AS TO FORM:
County Counsel

By: _____
Deputy

Name: _____

Date: _____

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

ATTACHMENT A
SCOPE OF WORK

I. Overview

John Wayne Airport (JWA) is owned and operated by the County of Orange; it is the only commercial airport in Orange County, California. JWA serves a population of approximately three million people in 34 cities and the unincorporated areas of Orange County. Ten commercial airlines and two commuter operators provide commercial passenger service at JWA with nonstop service to more than 30 destinations in the United States, Canada, and Mexico. In 2019 and prior to the pandemic, JWA served over 10.6 million passengers and had a total of 301,098 operations. Of those operations, 68% were generated by privately owned and operated general aviation aircraft. Two all-cargo carriers operate at JWA, and they transported approximately 15,793 tons in 2019.

JWA has one of the most stringent aircraft access and noise monitoring programs in the United States, and, perhaps, the world. Commercial airlines and cargo operators are regulated by the Phase 2 Commercial Airline Access Plan & Regulation (Access Plan). The Access Plan places restrictions on operational capacity, hours of operations, and noise levels. General Aviation operations are permitted 24 hours daily subject to compliance with the daytime noise limits and the more restrictive nighttime noise limits, as documented in the General Aviation Noise Ordinance (GANO).
In order for the JWA Access & Noise Office (ANO) to enforce the operational and noise restrictions, they utilize a state-of-the-art Airport Noise Monitoring System (ANMS). The ANMS is a fully integrated system that collects and correlates noise, flight track, and complaint data.

The ANMS consists of four primary components:

A. Noise Monitoring Station (NMS) Hardware/Airport Noise and Operations Management System (ANOMS) Software
B. WebTrak Public Flight Tracking System Software (WebTrak)
C. Viewpoint Complaint Collection and Management Service (Viewpoint)
D. Detailed Noise Event Reports Service

II. Maintenance and Support Services

The existing ANMS installation was completed in 2015 and is a critical part of the noise management program. The system must be capable of extensive report generation and analysis of flight tracks, noise levels, and system checks. As part of the existing ANMS, the ANOMS software serves to provide the airport with a wide range of report and analysis capabilities. However, the Access Plan and GANO includes a series of complex airline access rules, commercial and general aviation noise limits, curfews, and other reporting requirements. Specialized software, unique to JWA, was developed by BridgeNet International to enforce the rules and regulations. It was given the name "Access/GANO."

For purposes of this contract, the term "ANMS" will refer to the four primary components listed above. "Access/GANO"' will refer to the separate software that acquires data from the ANMS, the airlines, and other sources, which processes those reports that deal specifically with compliance with the Access Plan and the GANO. As such, the ANMS will provide access to and interface with the Access/GANO software.

It is critically important that the contractor works closely and cooperatively with the Access/GANO software. The contractor will ensure seamless acquisition of NMS data for Access/GANO processing and reporting. JWA will assume that the same functionality and settings of the current contract will be carried forward into the new contract.

Support and maintenance provided by the contractor will include continuous monitoring of the performance of the ANMS hardware and taking action to remedy any disturbance. The contractor will provide all service level support – JWA ANO staff will never have to visit a NMS location to perform

any investigation or repair. For Service Level (SL) 1 and 2 issues, 24 hours per day; seven days per week; 365 days per year. The contractor's project manager will meet quarterly with a designated member of the JWA ANO for the entire length of the contract.

The contractor will provide uptime to achieve a 99.9% service level availability. Further, the ANMS availability shall include the following:

1. ANOMS server: 99.9% reliability. All newly received data is correlated with existing data in real-time or near real-time, and backups are performed online to eliminate disruptions to ANOMS.
2. Flight tracking data: 99.9% reliability. All flight track data is available in ANOMS shortly after being recorded.
3. Noise monitor data: 99.9% reliability. Data is sent to the ANOMS server on a fixed short interval via cellular modem communication.
4. Complaint data: 99.9% reliability. All complaint data is available in ANOMS instantaneously after being submitted by a complainant.

The following subsections describe each of the primary components of the ANMS that the contractor shall provide continued maintenance and support services for. It is a requirement that the ANMS be easy to operate and capable of easy updates and modifications. Furthermore, the Airport assumes the same functionality and settings of the current contract and system forwarding into the new maintenance and support contract.

A. Noise Monitoring Station (NMS) Hardware/Airport Noise and Operations Management System (ANOMS) Software

The Noise Monitoring Station (NMS) hardware is installed at ten permanent locations around JWA. Additionally, one spare NMS hardware unit is stored at the JWA ANO office. The NMS hardware delivers reliable real-time data measurements to a centralized computer system and works seamlessly with ANOMS. The NMSs have software functionality that allows for configuration of the NMSs remotely, and that produces charts and reports on NMS status and performance.

The NMSs will meet the airport noise standards required within State of California Title 21. All calibrators used for checking the acoustical sensitivity of a microphone should conform to the Class 1 requirements of IEC 60942:2017. All sound level meters/microphones should comply with Class 1 requirements of IEC 61672-1:2002.

Each NMS will be equipped with:

1. A sound level meter with display.
2. Existing poles and microphone access.
3. Cellular antenna and modem.
4. Backup battery.
5. A lockable keyed alike, weatherproof security case.

Each NMS will be capable of:

1. Acoustic signal processing.
2. Measuring sound pressure levels in A and C weighted frequency over a range from 30 decibels (dB) to 120 dB.
3. Real-time data transfer.
4. Self–calibration and external calibration.
5. Two-way communication.
6. Real-time community interface.
7. Measuring and recording 1/3 octave band and spectral data.

8. User-friendly command selection and adjustment of discrimination parameters for individual NMSs.
9. Connecting to the mobile maintenance application.
10. Each NMS shall provide battery backup of sufficient capacity to allow full operation of the NMS for at least three days. Batteries should be checked during annual preventative maintenance and replaced as required.
11. Automatic retransfer of data when errors or data loss are identified. If it cannot wholly and successfully transfer data, it will provide a warning message. In the event of a power, or network interruption, each NMS, will be capable of collecting and storing additional data for a minimum 30 days, without overwriting any data not sent to the ANOMS server.

The contractor will provide all supplies necessary to provide continued maintenance and support services of the NMSs hardware. Supplies include but are not limited to windscreens, backup batteries, sound level meters, microphones, microphone cables (may be custom), cellular modems, etc.

The contractor should perform annual preventative maintenance for each of the ten NMS locations. The annual preventative maintenance will include the following at each NMS location: visual inspection, calibration, replacing hardware if needed, establishing network connection prior to leaving site, cleaning site, replacing backup batteries if needed, checking cellular modem connectivity, etc.

The annual preventative maintenance schedule should be coordinated with JWA ANO staff and should occur at each NMS prior to the previous calendar year date of completion. An annual preventive maintenance report and letter should be delivered within 7 business days from the completion of the annual preventative maintenance.

The contractor will provide live telephone technical support from Monday through Friday during the hours of 8:00 a.m. to 5:00 p.m. local time (PST). The contractor will describe response times for fixing system problems and JWA expects to apply penalties for failure to meet these response times.

JWA has as its goal, zero downtime. All necessary steps shall be made to achieve the least amount of time during which component is inoperable. JWA requires that any major system failure that results in the failure to collect and store noise or flight tracking data will have a response time of less than 24 hours or one business day.

Within 24 hours of resolving NMS failures, the contractor shall notify the ANO that the failure has been resolved and will include a brief description of the action taken to resolve the failure. The contractor will also notify the ANO within 4 hours of any condition(s) that have developed, or that might develop that might affect the proper operation of the ANMS.

The contractor shall provide Airport Noise and Operations Management System (ANOMS) as the ANMS software. ANOMS is an integrated software solution for monitoring, analyzing and reporting aircraft noise and collecting flight tracking data. ANOMS will have a straightforward graphical user interface (GUI) that supports streamlined and efficient workflows.

ANOMS operates on an off-site facilities server where data access is provided through the Internet. This has numerous advantages with respect to hardware, software, and database maintenance: (1) the ability for the contractor to maintain and repair hardware and database at its own site rather than traveling to JWA; (2) the shift of responsibility for server maintenance and operation to the contractor; and (3) the faster and more efficient re-loading and/or restoring of very large server databases.

Data Collection, Computation, and Compilation

The types of data collected and interpreted by the ANOMS software shall include:

1. Aircraft operations and flight track information data.

2. NMS data.
3. Noise event data.
4. Audio playback feature with a retention of one calendar year.
5. Community noise complaint data.
6. Meteorological data.
7. Mathematical and statistical operations.
8. Software features.

User Interface

ANOMS user-friendly interface features shall include:
1. User-defined query set-up for report generation.
2. Correlations between different data sets.
3. Zone, corridor and gate penetration analysis.
4. Track density analysis.
5. Point of Closest Approach (PCA) analysis.
6. Flight track screen display, filtering, sorting and coloring by airport, operation, etc.
7. Flight track filter.
8. Altitude profile analysis.
9. Automated noise reporter's response.
10. Exporting data/image/map layers.
11. Displaying noise monitors, noise reporters, flight track and any other georeferenced location on a map.
12. Base maps and map detail layers.
13. A replay of flight tracks, noise levels, noise events with video capture and export.
14. Custom and standard reports.

B. Webtrak Public Flight Tracking System Software (Webtrak)

The contractor will provide the WebTrak Public Flight Tracking System Software (Webtrak); a fully-hosted web-based flight track viewer and reporting complaints of aircraft noise events. WebTrak delivers a better experience for stakeholders and minimizes errors that the noise office needs to review and correct. WebTrak is unique in the industry by giving its users the same data used by the airport and linking reported aircraft events directly to ANOMS. WebTrak is a streamlined system that is fully integrated with the ANOMS used by JWA.

WebTrak simultaneously provides a self-service channel to report an aircraft noise event complaint and enables the community to see actual flight tracks and noise levels in a way that is easy to understand, and which facilitates investigation of their noise concern. It is common for communities surrounding airports to question the information that the airport is publishing regarding noise exposure and what is being done to control noise exposure. With WebTrak, the neighboring communities can see what is going on and how adherence to noise abatement procedures are being monitored using the same data that the JWA ANO uses.

The contractor will provide all associated continued maintenance and support services as part of the Webtrak solution to JWA. The Webtrak solution will be customizable to include JWA specific color schemes, wordmarks, logos, etc. to comply with JWA's style guide, which can be provided.

Webtrak is comprised of the following primary features:
1. Ability to review near real-time flight data and up to 3 months of historical flight track data.
2. Standard and satellite map layers available for viewer's choice.
3. Aircraft identification with icons indicating jet, propeller and helicopter.
4. Flight information tags with aircraft type (FAA registry), altitude, origin and destination, and flight number.
5. Color coding of aircraft operations in terminal airspace (arrival, departure, overflight).

6. Address locator tool enabling residents to pinpoint location in airport vicinity.
    i. Address lookup on the map to automatically locate position of interest
    ii. Ability to select and view specific flights
    iii. Check the point of closest approach of a flight and view graphically
7. Zoom, re-center and pan map functions
8. Fast-forward function and ability to adjust flight track animation speed of time period queried.
9. Messaging window or display.
10. Direct submission of reported aircraft noise event complaint information
11. Labeled one-second noise readings at each NMS.
12. Personal data collection.
    i. Control over the data collected
    ii. Presentation and acceptance of personal data collection
    iii. Anonymous complaint collection
13. Delaying of data to meet security requirements upon JWA request
    i. Removal of flights (such as military and police) to meet security requirements
    ii. Removal of flight information (for example call sign and tail number) for privacy purposes
    iii. Airport control over removal of individual flights for operational reasons
14. Overlay of quarterly and annual noise contours.
15. Overlay of flight track procedures.
16. Overlay of weather conditions.

C. Viewpoint Complaint Collection and Management Services (Viewpoint)

The contractor will provide the Viewpoint Complaint Collection and Management Service (Viewpoint). Viewpoint is a streamlined and efficient complaint management system that is fully integrated with ANOMS. It makes it easy for the community to lodge complaints and inquiries in a variety of modes while ensuring that JWA can efficiently manage the incoming data.

The Viewpoint approach delivers a better experience for the complainant and minimizes errors that the noise office needs to review and correct, significantly reducing workload. The most important part of a modern complaint management system is the ability to effectively handle complaints arriving from new channels as well as integrate with current systems in use. Viewpoint is unique in the industry, having a two-way integration with the ANOMS software. The user is able to effectively link new complaints with records in the ANOMS database as well as gain insight into both current and historical trends.

The contractor will provide all associated continued maintenance and support services as part of the Viewpoint solution to JWA.

<u>Community Opinion from Multi-Channel Collection Services</u>

Viewpoint will include the option for any or all the following collection channels:

1. Mobile phone app (Android and Apple iOS)
   The mobile phone app will be designed to provide a "low friction" method of submitting complaints for the community. Contact and name details are remembered and automatically completed. This will ensure a high degree of consistency in submitted complaints. The mobile phone app also makes uses of the device location to detect and set location.
2. Application Programming Interface (API) option for app compatibility
   The mobile phone app will work with a standardized API. App developers can use this API to deliver complaints into Viewpoint with approval from the Airport. Importantly, the API provides a return ticket for each successfully submitted complaint. The ticket can be cryptographically verified to prove successful submission of complaints via the API. Complainants claiming the Airport has lost complaints can be required to produce the tickets

as proof of successful submission. Viewpoint can rapidly use the provided ticket to verify submission and allow the user to look it up.
3. Community web complaint form
4. Web-based manual entry form for John Wayne Airport staff
5. Interactive telephone voice response system, including automatic phone call transcription for efficient review in ANOMS, for up to 300 calls per month (with surges to 500 calls per month for two months in each year of service)

Insight Dashboard

Viewpoint will include a web-based stakeholder dashboard with interactive heat maps and charts to easily access summary information about how complaints are trending. The data displayed will be based on preset periods such as last month, last year, and includes user-defined periods. The data will cover all complaints in the ANOMS database.

1. The dashboard map will include postcode trends, a heat map, and a cluster map.
2. The dashboard will include several information displays that allow the current complaints situation to be explored without the need to generate and review reports.
3. Key insight will include number of callers, number of new callers, number of callers per postcode, type of disturbances, top individuals, contact method analysis, and top locations.

Identity Management

Careful identity management is a key component of efficiently managing complaints when many channels for complaint submission are available. Maintaining the link to a single individual in the ANOMS system is important to gain the right insights into complaints data.

Viewpoint will look at the complainant level and the history of the caller. When a new complaint is submitted, it will link to the caller in ANOMS and display the history of the caller and concerns.

When merging and correction is necessary, Viewpoint is designed to provide highly effective merging and matching. The workflows are designed so that the user is efficiently working at the complainant level to review contact details and enter complainants into Viewpoint. For example, if a complainant has submitted ten complaints with the same contact details, Viewpoint automatically matches them to an existing complainant or groups them together so that the user only reviews one set of information to add a new complainant or match to the right complainant.

Viewpoint will deliver improvements in tracking complainant identity and efficient ways of working with complaints including:

1. Workflow improvements designed to reduce the analysis time reviewing multi-channel volumes of submissions
2. Minimizing the opportunities for complainants to enter varying contact details by auto-completion, caller id, mistyped information, etc.

D. Detailed Noise Event Reports Service

The contractor will provide the Detailed Noise Event Reports Service. The service automatically produces and delivers reports to a publicly accessible web folder. The format and content of the existing reports will be unchanged. The reports will be pushed from ANOMS directly to a web folder provided by contractor.

The reports will be provided one month and one week after the end of the month scheduled to be published, unless otherwise directed, to ensure all flight matching processing has been concluded by the JWA ANO and be configurable beyond that to allow for delayed loading of data and any needed corrections. The reports published to the web folder will be retained and made available for public

access indefinitely, while the service is operating. These reports do not change after publication but can be reissued at any time on request if corrections are required after publication.
The contractor will provide all associated continued maintenance and support services as part of the Detailed Noise Event Reports Service to JWA.

ATTACHMENT B
PAYMENT/COMPENSATION

A. **Compensation:** This is a firm-fixed fee Contract between the County and Contractor for Airport Noise Monitoring Systems Services as set forth in Attachment A, "Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions.**

B. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

Total Contract Amount Not To Exceed:
$~~1,063,937.91~~1,148,937.91

Contract Term	Monthly Amount	Yearly Amount
Year 1 - Sept 1, 2021 thru Aug 31, 2022	$16,636.72	$199,640.64
Year 2 - Sept 1, 2022 thru Aug 31, 2023	$16,969.45	$203,633.45
Year 3 - Sept 1, 2023 thru Aug 31, 2024	$17,308.84	$207,706.12
Year 4 - Sept 1, 2024 thru Aug 31, 2025	$17,655.02	$211,860.24
Year 5 - Sept 1, 2025 thru Aug 31, 2026	$18,008.12	$216,097.45
*Additional Service		$~~25,000.00~~110,000.00

*Additional Service – unanticipated services not included in the routine scheduled maintenance requested by County Project Manager in writing.

C. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications, and parking while on County sites during the performance of work and services under this Contract.

D. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

E. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.

F. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

A. Contractor's name and address
B. Contractor's remittance address, if different from 1 above
C. Contractor's Federal Taxpayer ID Number
D. Name of County Agency/Department
E. Delivery/service address
F. Master Agreement (MA) or Purchase Order (PO) number
G. Agency/Department's Account Number
H. Date of invoice and invoice number
I. Product/service description, quantity, and prices
J. Sales tax, if applicable
K. Freight/delivery charges, if applicable
L. Total

Invoices and support documentation are to be forwarded to **(not both):**

Mailed to John Wayne Airport
Attention: Accounts Payable
3160 Airway Avenue
Costa Mesa, CA 92626

OR

Emailed to AccountsPayable@ocair.com

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via and EFT Authorization Form. To request a form, please contact the DPA.

ATTACHMENT C
STAFFING PLAN

1) **Key Personnel**

Name	Classification /Designation	Licenses/Certifications (Include license/ certification number)	Years of Experience	Length of Time with Firm
Mark Karmelich	President		30	5
Bradley Bolton	Manager, Acoustics		6	4
Paul Dunholter	Founder & CEO	Professional Civil Engineer, California No. C48998	40	23
Corby DeMeis	Acoustics Engr.		3	2
Robert Milton	Manager, Software		20	16

Contractor understands that the individuals represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by County. Substitution of Contractor's Key Personnel shall be allowed only with prior written approval of County's Project Manager.

Contractor may reserve the right to involve other Contractor personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to County written approval. County reserves the right to have any of Contractor personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any Contractor personnel.

2) **Subcontractor(s)**

Listed below are subcontractor(s) anticipated by Contractor to perform services specified in Attachment A. Substitution or addition of Contractor's subcontractors in any given project function shall be allowed only with prior written approval of County's Project Manager.

Company Name & Address	Contact Name and Telephone Number	Project Function
Envirosuite 2100 #214-53, Palomar Airport Road, Carlsbad CA 92011	James Clinnin 310-350-8676	Project Manager
Envirosuite 2330 East Bidwell, Suite 210, Folsom, California 95630	Monica Singh 916-265-7702	Service Manager, Level 2 Support

Contract Summary Form

BridgeNet International Inc. Dba BridgeNet International A Tetra Tech Company

SUMMARY OF SIGNIFICANT CHANGES

1. Indemnification: updated language. Page 3.
2. Scope of Work: assumes the same functionality and settings of all components. Page 24.
3. Costs: Revised Rates; additional services. Page 31.
4. Any other significant material changes. N/A

SUBCONTRACTORS

This contract, due to the nature of the services, could require the addition of a subcontractor. In order to add a subcontractor to the contract, the provider/contractor must seek express consent from the department. Should the addition of a subcontractor impact the scope of work and/or contract amount, the department will bring the item back to the Board of Supervisors for approval.

This contract includes the following subcontractors or pass through to other providers.

Subcontractor Name	**Service(s)**	**Amount**
Envirosuite	Proprietary software and hardware	Included in pricing

CONTRACT OPERATING EXPENSES

Contract not to exceed $1,063,937.91

Services Description	**Year 1 9/1/21-8/31/22**	**Year 2 9/1/22-8/31/23**	**Year 3 9/1/23-8/31/24**	**Year 4 9/1/24-8/31/25**	**Year 5 9/1/25-8/31/26**	**Total**
Airport Noise Monitoring System Maintenance and Support Services	$199,640.64	$203,633.45	$207,706.12	$211,860.24	$216,097.45	$1,038,937.91
Additional Upgrade Services (5 year period)						$110,000.00
					Total CONTRACT Price not to exceed:	**$1,148,937.91**

Contract Summary Form

BridgeNet International Inc. Dba BridgeNet International A Tetra Tech Company

SUMMARY OF SIGNIFICANT CHANGES

1. Indemnification: updated language. Page 3.
2. Scope of Work: assumes the same functionality and settings of all components. Page 24.
3. Costs: Revised Rates; additional services. Page 31.
4. Any other significant material changes. N/A

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This contract includes the following subcontractors or pass through to other providers.

Subcontractor Name	**Service(s)**	**Amount**
Envirosuite	Proprietary software and hardware	Included in pricing

CONTRACT OPERATING EXPENSES

Contract not to exceed $1,063,937.91

Services Description	**Year 1 9/1/21-8/31/22**	**Year 2 9/1/22-8/31/23**	**Year 3 9/1/23-8/31/24**	**Year 4 9/1/24-8/31/25**	**Year 5 9/1/25-8/31/26**	**Total**
Airport Noise Monitoring System Maintenance and Support Services	$199,640.64	$203,633.45	$207,706.12	$211,860.24	$216,097.45	$1,038,937.91
Additional Upgrade Services (5 year period)						~~$25,000.00~~ $110,000.00
					Total CONTRACT Price not to exceed:	**~~$1,063,937.91~~ $1,148,937.91**

Agenda Item 36

AGENDA STAFF REPORT

ASR Control 21-000067

MEETING DATE:	07/27/21
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	All Districts
SUBMITTING AGENCY/DEPARTMENT:	County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S):	Peter DeMarco (714) 834-5777
	Brandy Miller (714) 834-3141

SUBJECT: Grant Applications/Awards Report

CEO CONCUR	**COUNTY COUNSEL REVIEW**	**CLERK OF THE BOARD**
Concur	No Legal Objection	Discussion 3 Votes Board Majority

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A **County Audit in last 3 years:** No

Prior Board Action: N/A

RECOMMENDED ACTION(S):

Approve grant applications/awards as proposed and other actions as recommended.

1. Approve FY 2021-2022 Annual Recurring Grant Matrix – Health Care Agency – $102,648,434.
2. Approve Retroactive Grant Application and Grant Award – Health Care Agency – Homeless Housing, Assistance and Prevention (HHAP) Continuum of Care Program – $3,823,692.
3. Approve Retroactive Grant Application and Grant Award – Health Care Agency – Homeless Housing, Assistance and Prevention (HHAP) – $3,422,435.
4. Approve Grant Award – Health Care Agency – Medication Assisted Treatment Expansion in County Criminal Justice Settings – $161,045.
5. Approve Grant Award – Health Care Agency – Closed Landfill Oversight – $164,920.
6. Approve Grant Award – Health Care Agency – CalRecycle Tire Enforcement Grant – $430,500.
7. Approve Grant Application – Probation Department – Naloxone Distribution Project – $12,600.
8. Approve Grant Award– John Wayne Airport – Airport Improvements Program (AIP) – $1,149,290.

9. Receive and File Grant Report.

SUMMARY:

See the attached Grants Report.

BACKGROUND INFORMATION:

See the attached Grants Report.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A-Grants Report

Grants Report

DRAFT

County Executive Office/Legislative Affairs

July 27, 2021
Item No: 36

County of Orange Report on Grant Applications/Awards

The Grants Report is a condensed list of grant requests by County Agencies/Departments that allows the Board of Supervisors to discuss and approve grant submittals in one motion at a Board meeting. County policy dictates that the Board of Supervisors must approve all grant applications prior to submittal to the grantor. This applies to grants of all amounts, as well as to new grants and those that have been received by the County for many years as part of an ongoing grant. Receipt of grants $50,000 or less is delegated to the County Executive Officer. Grant awards greater than $50,000 must be presented to the Board of Supervisors for receipt of funds. This report allows for better tracking of county grant requests, the success rate of our grants, and monitoring of County's grants activities. It also serves to inform Orange County's Sacramento and Washington, D.C. advocates of County grant activities involving the State or Federal Governments.

On July 27, 2021 the Board of Supervisors will consider the following actions:

RECOMMENDED ACTIONS

Approve grant applications/awards as proposed and other actions as recommended.

ACTION ITEMS:

1. Approve FY 2021-2022 Annual Recurring Grant Matrix – Health Care Agency – $102,648,434.
2. Approve Retroactive Grant Application and Grant Award – Health Care Agency – Homeless Housing, Assistance and Prevention (HHAP) Continuum of Care Program – $3,823,692.
3. Approve Retroactive Grant Application and Grant Award – Health Care Agency – Homeless Housing, Assistance and Prevention (HHAP) – $3,422,435.
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8. Approve Grant Award– John Wayne Airport – Airport Improvements Program (AIP) – $1,149,290.
9. Receive and File Grants Report.

If you or your staff have any questions or require additional information on any of the items in this report, please contact Brandy Miller at 714-834-3141

☒ GRANT APPLICATION / ☐ GRANT AWARD

Today's Date:	7/20/21		
Requesting Agency/Department:	Health Care Agency		
Grant Name and Project Title:	Various – see attached Grant Application Table		
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	Various – see attached Grant Application Table		
Application Amount Requested:	$102,648,434		
Application Due Date:	Various – see attached Grant Application Table		
Board Date when Board Approved this Application:	N/A		
Awarded Funding Amount:	N/A		
Notification Date of Funding Award:	N/A		
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)			
Recurrence of Grant	New ☐	Recurrent ☒	Other ☐ Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	Various – see attached Grant Matrix		
Does this grant require CEQA findings?	Yes ☐	No ☒	
What Type of Grant is this?	Competitive ☐	Other Type ☒	Explain: Allocation
County Match?	Yes ☒ Amount $8,236,495 or _____ %	No ☒	
How will the County Match be Fulfilled? (Please include the specific budget)	See attached Grant Application Table		
Will the grant/program create new part or full-time positions?	No		
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.		
The Health Care Agency requests Board authorization to apply for funding for recurring grants and allocations per the attached FY 2021-22 Annual Grants Application Table. The attached Annual Grants Application Table summarizes the grant and allocation programs that the Health Care Agency has been awarded in prior years. Actual application dates, funding amounts, and funding periods are determined by the funding source. The Health Care Agency requests Board approval to apply for these revenue funds during FY 2021-22 to support health care services in Orange County and Authority for Health Care Director, or designee, to sign all application related documents.			
Board Resolution Required? (Please attach document to eForm) **Deputy County Counsel Name:** (Please list the Deputy County Counsel that approved the Resolution)	Yes ☐	No ☒	
Recommended Action/Special Instructions (Please specify below)			
The Health Care Agency will return to the Board to obtain approval to accept awarded grant funds.			

Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Anna Peters (714)834-5150	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Dr. Clayton Chau	

AGENCY/DEPARTMENT: Health Care Agency

FY 2021-22 Annual Grants Application Table

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
	Behavioral Health Services								
1	Forensic Conditional Release Program (CONREP)	$1,667,694	California Department of State Hospitals	July	Recurring	-	No new positions	Funding is received from the Dept. of State Hospitals for ConRep for the Forensic Conditional Release Program (CONREP). CONREP provides community outpatient treatment services and supervision of judicially committed mentally disordered offenders.	No
2	Projects for Assistance in Transition from Homelessness (PATH)	$548,505	State of California, Department of Health Care Services (DHCS)	May	Recurring	33%	No new positions	Federal McKinney Projects for Assistance in Transition from Homelessness (PATH). The PATH grant is authorized under the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (Public Law 101-645, Title V, Subtitle B). The grant provides funds to states for the provision of services to individuals who have a serious mental illness, or who have co-occurring serious mental illness and substance use disorders, and who are homeless or at imminent risk of becoming homeless.	No
3	Substance Abuse & Mental Health Services Administration (SAMHSA), Community Mental Health Services Block Grant (MHBG).	$3,479,077	State of California, Department of Health Care Services (DHCS)	June	Recurring	-	No new positions	State of California, Department of Health Care Services (DHCS) provides the Federal Block Grant funds to county for Substance Abuse & Mental Health Services Administration (SAMHSA), Community Mental Health Services Block Grant (MHBG).	No
4	Substance Abuse Prevention and Treatment Block Grant (SABG)	$22,117,152	State of California, Department of Health Care Services (DHCS)	May	Recurring		No new positions	The Department of Health Care Services (DHCS) allocates SABG funding to counties to establish or expand state and local alcohol and other drug abuse prevention, care, treatment, and rehabilitation programs.	No
	Public Health Services								
5	AIDS Drug Assistance Program (ADAP)	Fee for service	California Department of Public Health, State Office of AIDS	Varies	Recurring	-	No new positions	ADAP grant provides funding to screen HIV-positive individuals for HIV medications and other programs an individuals may be eligible to receive.	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
6	Adolescent Family Life Program (AFLP)	$600,000	California Department of Public Health	Varies	Recurring		No new positions	The County receives AFLP funding from the Maternal and Child Health (MCH) State Branch to implement the strength-based case management program, Positive Youth Development (PYD) Model, with expectant and parenting youth under age 21 in Orange County.	No
7	California Home Visiting Program (CHVP) Nurse Family Partnership	$524,428	California Department of Public Health	Varies	Recurring		No new positions	The County receives CHVP SGF funding from the Maternal and Child Health (MCH) State Branch to implement the evidence-based home visiting program, Nurse Family Partnership, to improve the health, well-being and self-sufficiency of low-income, first-time parents and their children.	No
8	California Fresh Healthy Living Program (CFHLP)	$3,275,088	California Department of Public Health	Varies	Recurring	-	No new positions	The State contracts with the local health department to administer the federal Supplemental Nutrition Assistance Program-Education (SNAP-Ed) to improve the likelihood that persons eligible for SNAP will make healthy food choices within a limited budget and choose physically active lifestyles. Only evidence-based nutrition education and obesity prevention interventions/projects are used to provide direct and indirect nutrition education and technical assistance to achieve policy, systems and environmental changes. Activities can only be conducted at State approved sites.	No
9	Child Health and Disability Prevention Program and Health Care Program for Children in Foster Care	$4,137,926	California Department of Health Care Services	Varies	Recurring	-	No new positions	As part of the Children's Medical Services Plan, the State and Federal Governments provide funding for the Child Health and Disability Prevention (CHDP) and Health Care Program for Children in Foster Care (HCPCFC). CHDP provides health assessments for the early detection and prevention of diseases and disabilities in children and youth. HCPCFC provides public health nursing expertise in meeting the medical, dental, mental and developmental health needs of children and youth in out-of-home placement or foster care.	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
10	Childhood Lead Poisoning Prevention Program	$1,380,761	California Department of Public Health	Varies	Recurring	-	No new positions	This funding supports the Childhood Lead Poisoning Prevention Program. The Program goals are to prevent childhood lead poisoning through education, community outreach, identification of lead sources and case management of lead-burdened children.	No
11	Core Sexually Transmitted Disease (STD) Program Management	$231,622	California Department of Public Health, State Office of AIDS, STD Control Branch	Varies	Recurring	-	No new positions	STD/Integration funds STD and HIV disease investigation and surveillance and provides STD and HIV Partner Services (intervention to inform partners of exposure to STD/HIV) for testing and treatment, if necessary.	No
12	eGISP	$43,776	California Department of Public Health/Public Health Foundation Enterprises, Inc. DBA Heluna Health	Varies	Recurring	-	No new positions	The goal of eGISP is improve the ability to detect changes in susceptibility patterns and detect resistant infections sooner and inform efforts to maximize specificity of surveillance. The eGISP is an expansion of current goals of the GISP for testing and surveillance, to continue to proactively monitor Gonococcal infections within the County. The grant funds will support the PHL testing and shipping of samples to the outside laboratories.	No
13	Ending the HIV Epidemic (EHE-HRSA)	$1,886,632	U.S. Department of Health and Human Services (HRSA)	Varies	Recurring	-	No new positions	HRSA funding targeted to the 48 counties, 7 states, and 3 territories that are most impacted by the HIV epidemic and contributes to pillars 2 and 4 of the Ending the Epidemic: A Plan for America. Activities based on award include Care for High Acuity Clients, Rapid ART, and RAP Housing.	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
14	Ending the HIV Epidemic (EHE-SOA) Component A	$2,074,721	California Department of Public Health, State Office of AIDS	Varies	Recurring	-	No new positions	The funding is intended to build on the on-going activities funded through PS18-1802: Integrated HIV Surveillance and Prevention Programs for Health Departments to strategically advance (i.e., initiate new or expand existing) HIV prevention efforts. The funding will be used to address the four pillars of the EHE, including: 1) Diagnose all people living with HIV as early as possible; 2) Treat people living with HIV rapidly and effectively to reach and sustain viral suppression; 3) Prevent new HIV Transmissions by using proven interventions; and 4) Respond quickly to potential HIV outbreaks to get needed prevention and treatment services to people who need them. Component A is a required core component of this grant funding.	No
15	Ending the HIV Epidemic (EHE-SOA) Component C	$240,000	California Department of Public Health, State Office of AIDS	Varies	New	-	No new positions	The funding will be used to increase the capacity of the 17th St. Testing, Treatment and Care Clinic (HIV/STD Clinic) to further integrate HIV and STD services. The HIV/STD Clinic will implement the following five strategies: 1) Conduct an assessment of the HIV/STD Clinic infrastructure to document HIV and STD prevention services, identify gaps, and assess service quality; 2) Implement evidence-based approaches to scale up capacity; 3) Expand capacity of the HIV/STD Clinic to offer HIV pre-exposure prophylaxis (PrEP); 4) Optimize linkage to, retention in, and re-engagement with HIV medical care; and 5) Facilitate the development of partnerships with community HIV clinical and prevention services providers.	No
16	Hepatitis C Virus Collaboration Project	$234,570	California Department of Public Health, STD Control Branch	Varies	Recurring	-	No new positions	The funds must be used to develop and implement a public education and outreach program to raise hepatitis C awareness in high-risk groups, physician's offices, among health care workers, and in health care facilities by including hepatitis C counseling, education, and testing, as appropriate, into local state funded programs.	No
17	Housing Opportunities for Persons With AIDS (HOPWA)	$894,322	City of Anaheim	Varies	Recurring	-	No new positions	HOPWA provide funding for housing support services for eligible low income individuals living with HIV.	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
18	Human Immunodeficiency Virus (HIV) Prevention Program	$851,813	California Department of Public Health, State Office of AIDS	Varies	Recurring	-	No new positions	The HIV Prevention Program funds various prevention strategies including: 1) improving PrEP utilization, 2) increase and improve HIV routine testing in healthcare settings, 3) expand partner Services, 4) improve HIV linkage to medical care, and 5) increase and improve HIV Prevention and support services. evidenced-based prevention and education interventions to prevent the spread of HIV including HIV testing to identify those infected with HIV; counseling services for dissemination of risk reduction information; and Partner Services that assist HIV-positive individuals in disclosing their status to others that may have been exposed to HIV so they can be tested.	No
19	Human Immunodeficiency Virus (HIV) Surveillance	$425,502	California Department of Public Health, State Office of AIDS	Varies	Recurring	-	No new positions	HIV Surveillance grant ensures accurate and timely reporting of HIV/AIDS cases in Orange County.	No
20	Leaking Underground Storage Tanks, Local Oversight Program (LOP)	$1,025,296	State Water Resources Control Board	Varies	Recurring	-	No new positions	Environmental Health receives State funds to provide staffing, materials, and equipment necessary to conduct an underground storage tank corrective action program to identify and oversee the investigation and cleanup of unauthorized releases of petroleum related products within the county.	No
21	Local Oral Health Program	$749,810	California Department of Public Health	Varies	Recurring	-	No new positions	The Local Oral Health Program provides activities that support the state oral health plan to build capacity at the local level for the facilitation and implementation of education, prevention, linkage to treatment, surveillance, and case management services in the community.	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
22	Maternal, Child and Adolescent Health (MCAH)	$2,703,360	California Department of Public Health	Varies	Recurring	-	No new positions	The County receives MCAH allocation through Maternal and Child Health (MCH) State Branch to provide leadership in planning, developing, and supporting comprehensive systems of preventive and primary care for the maternal, child and adolescent population. This includes assessment of needs, coordinating and planning efforts at both state and local levels, and evaluation of program outcomes.	No
23	Memorandum of Understanding between Children and Families Commission of Orange County and Orange County for Provision of Public Health Nursing Services for Bridges Prenatal-to-Three Health Network	$1,500,000	Children and Families Commission of Orange County	Varies	Recurring	-	No new positions	The Bridges Network is comprised of hospitals, community-based programs, and Public Health Nursing services focused on developing strategic and responsive services that promote health early childhood of young children birth through age five. This Agreement directly funds Public Health Nursing staff and allows HCA to leverage Title XIX funds in programs supporting prenatal, infant and child populations.	No
24	Pediatric Immunization Project	$12,357,894	California Department of Public Health	Varies	Recurring	-	No new positions	The State contracts with the County for the Pediatric Immunization Project. This project provides vaccine management and accountability at the provider level; increases and supports provider participation in the local immunization registry; provides Quality Assurance site visits, education, training and technical assistance to providers; manages the local Perinatal Hepatitis B Prevention program; works collaboratively with local public and private/nonprofit, agencies, and professional organizations to increase influenza immunization; develops and disseminates consumer information and educational materials, including vaccine benefit and risk communication; and facilitates reporting of school and population assessments. Received a Letter of Intent to Award Funding in April 2021 which indicated that an additional $11,710,259 is intended to be awarded in FY 21-22 to increase COVID-19 vaccine services.	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
25	Pre-Exposure Prophylaxis Provider Network	Fee for Service	California Department of Public Health, State Office of AIDS	Varies	New	-	No new positions	The Pre-Exposure Prophylaxis Assistance Program (PrEP-AP) assists at risk individuals with PrEP-AP related medical costs for uninsured clients and PrEP-AP related medical co-pays, deductibles, and drug costs not covered by a client's health insurance plan or the manufacturer's assistance program for insured clients.	No
26	Public Beach Safety Monitoring	$365,000	State Water Resources Control Board	Varies	Recurring	-	No new positions	Funds are used to monitor and test the ocean waters at public beaches that are adjacent to storm drains that flow into the ocean during summer months, to respond to sewage spills, to post warnings or closure of ocean and bay waters when there is a violation of standards, and to provide public notification through a 24-hour a day telephone hotline, in an effort to reduce the risk of exposure to disease-causing microorganisms in the water at beaches.	No
27	Public Beach Safety Monitoring	$365,000	State Water Resources Control Board	Varies	Recurring	-	No new positions	Funds are used to monitor and test the ocean waters at public beaches that are adjacent to storm drains that flow into the ocean during summer months, to respond to sewage spills, to post warnings or closure of ocean and bay waters when there is a violation of standards, and to provide public notification through a 24-hour a day telephone hotline, in an effort to reduce the risk of exposure to disease-causing microorganisms in the water at beaches.	No
27	Ryan White Act, Part A and Minority AIDS initiative (MAI)	$6,292,035	U.S. Department of Health and Human Services (HRSA)	Varies	Recurring	-	No new positions	The County is eligible for funding under Ryan White HIV/AIDS Treatment Modernization Act, (Ryan White Act) Part A. The funds under the Ryan White Act Part A must be used to deliver or enhance HIV related outpatient and ambulatory health and support services, including case management and comprehensive treatment services for individuals and families with HIV disease.	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
28	Ryan White Act, Part B - HIV Care Program and MAI	$1,882,554	California Department of Public Health, State Office of AIDS	Varies	Recurring	-	No new positions	The HIV Care Program funds outpatient medical care to prevention or delay the progression of HIV disease; medical case management to help ensure that patient's remain in medical care; early intervention services to conduct HIV counseling and testing to identify HIV-positive individuals and link them to care services; and outreach services to find individuals who have fallen out-of-care and bring them back into care.	No
29	Ryan White Act, Part C	$671,489	U.S. Department of Health and Human Services (HRSA)	Varies	Recurring	-	No new positions	The County receives Ryan White Act, Part C funds to provide primary medical care and case management services to AIDS/HIV patients. The goals of this program also include providing a quality assurance program and enhancing the HIV preventive health services by increasing the level of voluntary partner notification services.	No
30	Sexually Transmitted Disease Surveillance Network (SSuN)	$157,590	California Department of Public Health, STD Control Branch	Varies	Recurring	-	No new positions	SOA funding to provide line-listed visit-level data (demographics, gender of sex partners, symptoms, etc.) on a bimonthly basis. Approximately 350 surveys must be conducted on an annual basis and HIV surveillance matching must be conducted.	No
31	Sexually Transmitted Disease Management and Collaboration (STD PMC)	$287,888	California Department of Public Health, STD Control Branch	Varies	Recurring	-	No new positions	SOA General Funds to provide STD prevention services through: 1) STD surveillance and disease investigation, 2) Testing, treatment, navigation and linkage to services, 3) Participate in collaborations and coalitions, and 4) Engage LHJs and CBOs in partnerships to provide services.	No
32	Tuberculosis Local Assistance Base Award and Food, Shelter, Incentives and Enables Allotment (FSIE)	$1,148,638	California Department of Public Health, Tuberculosis Control Branch	Varies	Recurring	-	No new positions	The County receives Tuberculosis Local Assistance funds to support tuberculosis control, prevention and treatment, and housing and food for homeless tuberculosis patients. The Base Award is $1,083,283 with an allotment of up to $65,355 for Food, Shelter, Incentives and Enables (FSIE) expenditures. The FSIE Allotment should be used to enhance treatment adherence, prevent homelessness, and/or promote less restrictive alternatives that decrease or obviate the need for detention.	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
33	Tobacco Use Prevention Program	$1,357,358	California Department of Public Health, Tobacco Control Program	Varies	Recurring	-	No new positions	Tobacco Use Prevention Program receives State funding from Proposition 99/56 tobacco taxes. The goal of the program is to reduce the prevalence of tobacco use through educational programs. The program educates youth about the health risks of tobacco use, conducts media campaigns promoting smoking cessation, provides assistance to help nonsmokers avoid exposure to secondhand smoke, and educates merchants about existing laws that prohibit selling tobacco to minors.	No
34	Women, Infants and Children (WIC) Supplemental Nutrition Program	$4,899,601	California Department of Public Health	Varies	Recurring	-	No new positions	The WIC Supplemental Nutrition program is funded by the State with Federal Department of Agriculture pass-through funds. Program goals are to provide nutrition education, counseling and diet supplementation (through the distribution of food vouchers) to low-income pregnant and lactating women and to infants and children who are found to be nutritionally at-risk.	No
	Emergency Medical Services								
35	California Children's Services (CCS) Administrative Program	$6,856,421	California Department of Health Care Services-Children's Medical	Varies	Recurring	$376,914	No new positions	The State and Federal governments fund the CCS Administrative Program. The program provides case management, service authorization, eligibility determination, and office support in the treatment of children with eligible medical conditions.	No
36	California Children's Services (CCS) Medical Therapy Program	$6,555,065	California Department of Health Care Services-Children's Medical	Varies	Recurring	$6,555,065	No new positions	The State government funds the CCS Medical Therapy Program (MTP). The program provides diagnostic and treatment services including physical and occupational therapy in the treatment of children with eligible medical conditions.	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
37	Public Health Emergency Preparedness	$2,879,225	California Department of Public Health	July	Recurring	-	No new positions	Grant funds are used to strengthen local jurisdiction's preparedness, response and recovery capabilities to bioterrorism, infectious disease outbreaks and other public health emergencies. These funds emphasize assessing, measuring and sustaining preparedness capabilities. The funding helps build and sustain the following capabilities: Community Preparedness, Community Recovery, Emergency Operations Coordination, Public Information & Warning, Fatality Management, Information Sharing, Mass Care, Medical Countermeasure Dispensing, Medical Material Management and Distribution, Medical Surge, Non-Pharmaceutical Interventions, Public Health Laboratory Testing, PH Surveillance & Epi Investigation, Responder Health & Safety, Volunteer Management.	No
38	Hospital Preparedness Program	$760,863	California Department of Public Health	July	Recurring	-	No new positions	Grant funds are used to strengthen local preparedness, response and recovery efforts of the health care agency during health disasters in support of the local and regional health care system. The funding helps build and sustain the following capabilities: Foundation for Health Care & Medical Readiness, LEMSA	No

Summary of Anticipated Grant Applications for FY 2021-22

#	Name of Grant	Application Amount to be Requested (Estimated)	Grant Source	Application Due Date (Estimated)	Grant Status (New or Recurring)	County Match Required? ($ amount or %)	New Full or Part-time Positions	Project Name and Purpose of Grant	Does this Grant Require CEQA Findings?
	System Coordination Services								
39	Emergency Solutions Grant (ESG)	$640,283	CA Department of Housing and Community Development	May	Recurring	100%	No new positions	The State ESG program provides funding to (1) engage homeless individuals and families living on the street; (2) improve the number and quality of emergency shelters for homeless individuals and families; (3) help operate these shelters; (4) provide essential services; and (5) rapidly rehouse homeless individuals and families. County of Orange has been designated as the Administrative Entity to administer funds by the Orange County Continuum of Care.	No
40	Continuum of Care Planning Grant	$701,668	U.S. Department of Housing & Urban Development	Varies	Recurring	25%	No new positions	The Continuum of Care Program Planning Grant is used to support the planning activities associated with the U.S. Department of Housing and Urban Development Continuum of Care Program Homeless Assistance Grant and implementation of Federal Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act requirements.	No
41	Continuum of Care Coordinated Entry System	$1,231,239	U.S. Department of Housing & Urban Development	Varies	Recurring	25%	No new positions	Orange County's Coordinated Entry System standardizes the homeless services assessment process and coordinates referrals to homeless services. These funds will be used to support a fully functional Coordinated Entry System in compliance with the HUD CoC Homeless Assistance Grant Program and implementation of Federal HEARTH Act requirements.	No
	Grand Total	**$102,648,434**							

CLAYTON CHAU, MD PhD
DIRECTOR/COUNTY HEALTH OFFICER

JENNA SARIN, MSN, RN, PHN
INTERIM ASSISTANT AGENCY DIRECTOR

405 W. 5th STREET, 7th FLOOR
SANTA ANA, CA 92701
www.ochealthinfo.com

OFFICE OF THE DIRECTOR

DATE: July 20, 2021

TO: Frank Kim
County Executive Officer

FROM: Clayton Chau, MD, PhD

SUBJECT: Retroactive Request to Apply for the Homeless Housing, Assistance and Prevention (HHAP) Round 2

This memo is being submitted to request that the County Executive Officer place the subject grant application on the July 27, 2021, Board of Supervisors Meeting Agenda. Due to the COVID-19 pandemic response taking priority, the Health Care Agency requests retroactive approval for this Homeless Housing, Assistance and Prevention (HHAP) Round 2 funding opportunity for the County of Orange and the Orange County Continuum of Care (CoC) allocation.

This grant will be primarily used to provide operating subsidies for Project Homekey Programs as contracted by the Health Care Agency (HCA) on behalf of the County of Orange and the Orange County CoC. Utilization of this funding for the purposes of Project Homekey aligns with the HHAP's funding goal of promoting evidenced-based solutions to address homelessness and supports the ongoing development of a System of Care in Orange County. The Project Homekey Programs provide 132 units of non-congregate interim shelter at two sites, the Tahiti Inn and the Stanton Inn and Suites, for those experiencing homelessness. These sites will become affordable permanent housing in the next few years. The total HHAP grant allocation for the County of Orange is $3,422,435 and for the Orange County CoC is for $3,823,692.

HCA has been awarded the HHAP funding for the County of Orange and the Orange County CoC.

If you have any questions about the grant, please contact Jason Austin, Director of Care Coordination at (714) 834-5000.

Thank you for your consideration,

Clayton Chau, MD, PhD
Agency Director/County Health Officer

☒ GRANT APPLICATION / ☒ GRANT AWARD

Today's Date:	July 12, 2021	
Requesting Agency/Department:	Health Care Agency Office of Care Coordination	
Grant Name and Project Title:	Homeless Housing, Assistance and Prevention (HHAP) Program	
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	State of California Business, Consumer Services and Housing Agency Homeless Coordinating and Financing Council	
Application Amount Requested:	$3,823,692	
Application Due Date:	January 23, 2021	
Board Date when Board Approved this Application:	N/A	
Awarded Funding Amount:	$3,823,692	
Notification Date of Funding Award:	July 8, 2021	
Is this an Authorized Retroactive Grant Application/Award? (If yes, attach memo to CEO)		
Recurrence of Grant	New ☐	Recurrent ☒ Other ☐ Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	Round 1: $8,081,115.98	
Does this grant require CEQA findings?	Yes ☐	No ☒
What Type of Grant is this?	Competitive ☐	Other Type ☒ Explain: Block grant program based on allocation formula
County Match?	Yes ☐ Amount:	No ☒
How will the County Match be Fulfilled? (Please include the specific budget)	N/A	
Will the grant/program create new part or full-time positions?	No	
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.	

The Homeless Housing, Assistance and Prevention (HHAP) Program Round 2 provides one-time block grant funds to support regional coordination and expand or develop local capacity to address immediate homelessness challenges. HHAP Round 2 is authorized by Assembly Bill 83 (Committee on Budget, Chapter 15, Statutes of 2020), which was signed into law by Governor Gavin Newsom on June 29, 2020. HHAP funding is allocated to three jurisdiction types for distribution: Continuums of Care, large cities and counties. The HHAP Program Round 2 is to fund evidence-based solutions that address and prevent homelessness among eligible populations, including but not limited to rental assistance and rapid rehousing, operating subsidies, landlord incentives, outreach and coordination, prevention and shelter diversion into permanent housing and capital improves for the development of new navigation centers and emergency shelters.

The Orange County Continuum of Care Board designated the County of Orange as the Administrative Entity on August 22, 2018, for all future federal and state funding that designates the Continuum of Care as an eligible applicant. The Orange County Continuum of Care Board approved the utilization of HHAP Program Round 2 funding allocated to the Orange County Continuum of Care (CoC) to provide operating subsidies for Project

Homekey proposals as submitted by the Health Care Agency (HCA) on behalf of the County of Orange and the Orange County CoC to the State of California. Utilization of this funding for the purposes of Project Homekey aligns with the HHAP's funding goal of promoting evidenced-based solutions to address homelessness and supports the ongoing development of a System of Care in Orange County.

On July 8, 2021, the State of California Business, Consumer Services and Housing Agency (BCSH) announced the award of the HHAP Round 2 funding to the Orange County CoC. HCA is bringing the award to the Board of Supervisors for approval and authorization to execute State Standard Agreement 21-HHAP-00044 with BCSH. The Agreement contains an indemnification provision that differs from the County standard indemnification provisions. CEO Risk Management has reviewed and approved this provision.

This submitted Grant Authorization eForm is specific to the Orange County Continuum of Care allocation of HHAP Program Round 2 funding in the amount of $3,823,692.

Board Resolution Required? (Please attach document to eForm) **Deputy County Counsel Name:** (Please list the Deputy County Counsel that approved the Resolution)	Yes ☐ No ☒

Recommended Action/Special Instructions
(Please specify below)

1. Accept Homeless Housing, Assistance and Prevention Program Round 2 grant award in the amount of $3,823,692 and authorize the Health Care Agency Director or designee to execute the Standard Agreement number 21-HHAP-00034 with the California Business, Consumer Services, and Housing Agency, and any subsequent non-financial and immaterial amendments or modifications thereto.

Department Contact:	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Jason Austin
Director
Office of Care Coordination
JAustin@ochca.com
(714) 834-5000

Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:

Jason Austin
Director of Care Coordination

☒ GRANT APPLICATION / ☒ GRANT AWARD

Today's Date:	July 12, 2021	
Requesting Agency/Department:	Health Care Agency Office of Care Coordination	
Grant Name and Project Title:	Homeless Housing, Assistance and Prevention (HHAP) Program	
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	State of California Business, Consumer Services and Housing Agency Homeless Coordinating and Financing Council	
Application Amount Requested:	$3,422,435	
Application Due Date:	January 23, 2021	
Board Date when Board Approved this Application:	N/A	
Awarded Funding Amount:	$3,422,435	
Notification Date of Funding Award:	July 8, 2021	
Is this an Authorized Retroactive Grant Application/Award? (If yes, attach memo to CEO)		
Recurrence of Grant	New ☐ Recurrent ☒	Other ☐ Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	Round 1: $7,486,575.73	
Does this grant require CEQA findings?	Yes ☐	No ☒
What Type of Grant is this?	Competitive ☐	Other Type ☒ Explain Block grant program based on allocation formula
County Match?	Yes ☐ Amount:	No ☒
How will the County Match be Fulfilled? (Please include the specific budget)	N/A	
Will the grant/program create new part or full-time positions?	No	
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.	

The Homeless Housing, Assistance and Prevention (HHAP) Program Round 2 provides one-time block grant funds to support regional coordination and expand or develop local capacity to address immediate homelessness challenges. HHAP Round 2 is authorized by Assembly Bill 83 (Committee on Budget, Chapter 15, Statutes of 2020), which was signed into law by Governor Gavin Newsom on June 29, 2020. HHAP funding is allocated to three jurisdiction types for distribution: Continuums of Care, large cities and counties. The HHAP Program Round 2 is to fund evidence-based solutions that address and prevent homelessness among eligible populations, including but not limited to rental assistance and rapid rehousing, operating subsidies, landlord incentives, outreach and coordination, prevention and shelter diversion into permanent housing and capital improves for the development of new navigation centers and emergency shelters.

The Health Care Agency (HCA) committed to utilize the HHAP Round 2 funding allocated to the County of Orange operating subsidies in the Project Homekey proposals to increase interim and supportive housing units. Utilization of this funding for the purposes of Project Homekey aligns with the HHAP's funding goal of promoting evidenced-based solutions to address homelessness and supports the ongoing development of a System of Care in Orange

County.

On July 8, 2021, the State of California Business, Consumer Services and Housing Agency (BCSH) announced the award of the HHAP Round 2 funding to the County of Orange. HCA is bringing the award to the Board of Supervisors for approval and authorization to execute State Standard Agreement 21-HHAP-00034 with BCSH. The Agreement contains an indemnification provision that differs from the County standard indemnification provisions. CEO Risk Management has reviewed and approved this provision.

This submitted Grant Authorization eForm is specific to the County of Orange allocation of HHAP Program Round 2 funding in the amount of $3,422,435.

Board Resolution Required? (Please attach document to eForm) **Deputy County Counsel Name:** (Please list the Deputy County Counsel that approved the Resolution)	Yes ☐ No ☒

Recommended Action/Special Instructions
(Please specify below)

1. Accept Homeless Housing, Assistance and Prevention Program Round 2 grant award in the amount of $3,422,435 and authorize the Health Care Agency Director or designee to execute the Standard Agreement number 21-HHAP-00034 with the California Business, Consumer Services, and Housing Agency, and any subsequent non-financial and immaterial amendments or modifications thereto.

Department Contact:	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Jason Austin
Director
Office of Care Coordination
JAustin@ochca.com
(714) 834-5000

Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:

Jason Austin
Director of Care Coordination

CEO-Legislative Affairs Office
Grant Authorization eForm

☐ **GRANT APPLICATION /** ☒ **GRANT AWARD**

Today's Date:	7/8/2021
Requesting Agency/Department:	Health Care Agency
Grant Name and Project Title:	Expanding MAT Access in County Criminal Justice Settings-Medication Assisted Treatment Expansion Project 2.0
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	Health Management Associates
Application Amount Requested:	$161,045
Application Due Date:	6/30/2021
Board Date when Board Approved this Application:	6/22/21
Awarded Funding Amount:	$161,045
Notification Date of Funding Award:	7/7/21
Is this an Authorized Retroactive Grant Application/Award? NO (If yes, attach memo to CEO)	
Recurrence of Grant	New ☒ Recurrent ☐ Other ☐ Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A
Does this grant require CEQA findings?	Yes ☐ No ☒
What Type of Grant is this?	Competitive ☐ Other Type ☒ Explain: Formula
County Match?	Yes ☐ Amount____ or _____ % No ☒
How will the County Match be Fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.

The County of Orange has requested funding to coordinate the healthcare and care management of individuals incarcerated within the Orange County Jail System who are receiving Substance Use Disorder (SUD) treatment and prescribed Medication Assisted Treatment (MAT). Anticipated use of the funds include the following:

- Procurement of injectable medication to augment existing treatment protocols.

The California Department of Health Care Services (DHCS), under its federal funding for the State Opioid Response "*Medication Assisted Treatment Expansion Project 2.0*" has provided funds to be distributed to all county teams participating in the project *Expanding Access to MAT in County Criminal Justice Settings.* The grant authority intends to provide funds to all participating county teams.

Board Resolution Required? (Please attach document to eForm)	Yes ☐ No ☒

Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	

Recommended Action/Special Instructions
(Please specify below)

1. Accept award of Health Management Associates, Inc., in the amount of $161,045.

2. Approve the grant agreement (Memorandum of Understanding) in the amount of $161,045 for the grant period July 9, 2021 through August 31, 2022 and authorize the Health Care Agency Director or designee to execute the grant Memorandum of Understanding.

Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Joanne Lim, 714-824-1382, JoLim@ochca.com

Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:

Dr. Clayton Chau

☐ GRANT APPLICATION / ☒ GRANT AWARD

Today's Date:	July 1, 2021	
Requesting Agency/Department:	Health Care Agency	
Grant Name and Project Title:	Closed Landfill Oversight	
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Environmental Protection Agency - Department of Toxic Substances Control (DTSC)	
Application Amount Requested:	N/A	
Application Due Date:	N/A	
Board Date when Board Approved this Application:	N/A	
Awarded Funding Amount:	$164,920	
Notification Date of Funding Award:	May 24, 2021	
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)		
Recurrence of Grant	New ☒ Recurrent ☐	Other ☐ Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A	
Does this grant require CEQA findings?	Yes ☐	No ☒
What Type of Grant is this?	Competitive ☐	Other Type ☒ Explain: The DTSC has requested the Health Care Agency, Environmental Health Division to enter into an Agreement to assist with regulatory oversight at the former El Toro Marine Corps Air Station.
County Match?	Yes ☐ Amount_____ or _____ %	No ☒
How will the County Match be Fulfilled? (Please include the specific budget)	N/A	
Will the grant/program create new part or full-time positions?	No	
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.	

The California Environmental Protection Agency - Department of Toxic Substances Control (DTSC) has requested the Health Care Agency, Environmental Health Division to enter into an Agreement to assist with regulatory oversight at the El Toro former Marine Corps Air Station (MCAS) facility. There are a number of closed landfills located on the premises of the El Toro former MCAS facility that are within the regulatory jurisdiction of Environmental Health, and a number of state regulatory agencies, including DTSC, are currently involved in the remediation efforts undertaken and coordinated by the U.S. Department of the Navy. The agreement funds are to be used to reimburse Environmental Health for staff time spent performing site inspections at the El Toro former MCAS facility and associated activities: project management, report reviews, electronic/letter correspondence, and file review/management. Funds will be paid from the Memorandum of Agreement and a Cooperative Agreement between the U.S. Department of Defense (DoD) and State of California to expedite cleanup

of hazardous waste sites located on the DoD installations currently or formerly owned by the DoD within the State of California and to ensure compliance with applicable State law and regulations.

Board Resolution Required? (Please attach document to eForm)	Yes ☐ No ☒
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	Massoud Shamel

Recommended Action/Special Instructions
(Please specify below)

Authorize the Health Care Agency Director or designee to execute the DTSC Standard Agreement No. 20-T4910 and accept funds not to exceed $164,920 for the fiscal year 2021/2022.

Authorize the Health Care Agency Director or designee to execute such future amendments to the Agreement referenced above that do not change the Agreement amount by more than 10% of the original amount and/or do not materially change the scope of work.

Authorize the Health Care Agency Director to execute the Certification Form 04/2017, California Civil Rights Laws Attachment Form, and the Darfur Contracting Act Certification as relate to DTSC Standard Agreement No. 20-T4910.

Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Marc Meulman (714) 834-8025 mmeulman@ochca.com
Christine Lane (714) 433-6473 clane@ochca.com

Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:

Margaret Bredehoft (714) 834-3882

☐ GRANT APPLICATION / ☒ GRANT AWARD

Today's Date:	July 1, 2021		
Requesting Agency/Department:	Health Care Agency / Environmental Health		
Grant Name and Project Title:	Waste Tire Enforcement - TEA28		
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Department of Resources Recycling and Recovery (CalRecycle)		
Application Amount Requested:	$430,500		
Application Due Date:	January 14, 2021		
Board Date when Board Approved this Application:	December 8, 2020		
Awarded Funding Amount:	$430,500		
Notification Date of Funding Award:	July 1, 2021		
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)			
Recurrence of Grant	New ☐	Recurrent ☒	Other ☐ Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	Applied for annually: TEA23 $418,032 TEA24 $418,032 TEA25 $414,427 TEA26 $481,926 TEA27 $430,561		Awarded: $382,581 $580,798 $414,427 $485,986 $430,562
Does this grant require CEQA findings?	Yes ☐		No ☒
What Type of Grant is this?	Competitive ☐		Other Type ☒ Explain: Non-competitive State grant to local agencies. Funding from new tire consumer fee.
County Match?	Yes ☐ Amount____ or _____ %		No ☒
How will the County Match be Fulfilled? (Please include the specific budget)	N/A		
Will the grant/program create new part or full-time positions?	No		
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.		
CalRecycle offers Tire Enforcement grants to city and county agencies throughout California to investigate illegal tire disposal activities and perform waste tire inspections to ensure compliance with all applicable laws and regulations. By implementing this program at the local level, HCA is providing onsite assistance and guidance to Orange County businesses to comply with State law.			
Board Resolution Required? (Please attach document to eForm)	Yes ☐		No ☒
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	N/A		
Recommended Action/Special Instructions (Please specify below)			
The Health Care Agency requests that the Board of Supervisors approve the Recommended Action authorizing the Agency to accept this grant award for the term July 1, 2021 through September 30,			

2022.

Authorize the Health Care Agency Director or designee to execute such future amendments to the Agreement referenced above that do not change the Agreement amount by more than 10% of the original amount and/or do not materially change the scope of work.

Massoud Shamel of the office of County Counsel has reviewed the grant agreement and has approved to form.

Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Christine Lane (714) 433-6473 clane@ochca.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Margaret Bredehoft (714) 834-3882 or Marc Meulman (714) 834-8025	

CEO-Legislative Affairs Office
Grant Authorization eForm

☒ GRANT APPLICATION / ☐ GRANT AWARD

Today's Date:	July 19, 2021	
Requesting Agency/Department:	Probation Department	
Grant Name and Project Title:	Naloxone Distribution Project	
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Department of Health Care Services (DHCS)	
Application Amount Requested:	Estimated - $12,600	
Application Due Date:	Continuous	
Board Date when Board Approved this Application:	N/A	
Awarded Funding Amount:	TBD	
Notification Date of Funding Award:	TBD	
Is this an Authorized Retroactive Grant Application/Award? (If yes, attach memo to CEO)		
Recurrence of Grant	New ☐ Recurrent ☐	Other ☒ Explain: Non-Monetary Grant
If this is a recurring grant, please list the funding amount applied for and awarded in the past:		
Does this grant require CEQA findings?	Yes ☐	No ☒
What Type of Grant is this?	Competitive ☐	Other Type ☒ Explain: Non-Monetary Grant
County Match?	Yes ☐ Amount_____ or _____ %	No ☒
How will the County Match be Fulfilled? (Please include the specific budget)	N/A	
Will the grant/program create new part or full-time positions?	No	
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.	

Naloxone is a life-saving medication that reverses an opioid overdose while having little to no effect on an individual if opioids are not present in their system. Naloxone works by blocking the opioid receptor sites, reversing the toxic effects of the overdose. Naloxone requires a prescription but is not a controlled substance. It has few known adverse effects and no potential for abuse. The Naloxone Distribution Project (NDP) aims to address the opioid crisis by reducing opioid overdose deaths through the provision of free naloxone, in its nasal spray formulation.

The NDP is funded by the Substance Abuse and Mental Health Services Administration (SAMHSA) and administered by the California Department of Health Care Services (DHCS) to provide these kits. The Naloxone kits are at no cost to applicants to assist in combating opioid overdose-related deaths throughout California. Kits will be awarded on a first-come, first-served basis. Probation Department is eligible to apply for Naloxone and will be applying for 168 Naloxone kits – estimated at $12,600. This is a non-monetary grant and only the Naloxone kits will be distributed.

CEO-Legislative Affairs Office
Grant Authorization eForm

Only Probation personnel who are trained in accordance with mandated training guidelines shall deploy Naloxone kits in the field. The kits are pivotal to ensuring the safety of our officers as well as the people we serve.	
Board Resolution Required? (Please attach document to eForm) **Deputy County Counsel Name:** (Please list the Deputy County Counsel that approved the Resolution)	Yes ☐ No ☒
Recommended Action/Special Instructions (Please specify below)	
1. Authorize the Chief Probation Officer, or designee, to execute standard agreement to accept Naloxone from SAMHSA administered by The California Department of Health Care Services (DHCS) for the Naloxone Distribution Project (NDP).	
Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Debbie K. Le (714) 667 - 7710 Debbie.Le@prob.ocgov.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Steven J. Sentman, Chief Probation Officer (714) 645-7001 Steven.Sentman@prob.ocgov.com Or Catherine E. Stiver, Chief Deputy Probation Officer (714) 645-7013 Catherine.stiver@prob.ocgov.com Stacey J. McCoy, Division Director (714) 937 – 4701 Stacey.McCoy@prob.ocgov.com	

CEO-Legislative Affairs Office
Grant Authorization eForm

☐ **GRANT APPLICATION /** ☒ **GRANT AWARD**

Today's Date:	7/13/2021
Requesting Agency/Department:	John Wayne Airport (JWA)
Grant Name and Project Title:	Airport Improvements Program (AIP) – Airfield Lighting and Signage Improvements Project [Taxiway Pavement Portion] (Project)
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	Federal Aviation Administration (FAA) and CARES Act Grant
Application Amount Requested:	$926,212.82
Application Due Date:	December 31, 2020
Board Date when Board Approved this Application:	12/08/2020
Awarded Funding Amount:	$1,149,290
Notification Date of Funding Award:	7/06/2021
Is this an Authorized Retroactive Grant Application/Award? This is not a retroactive grant award. (If yes, attach memo to CEO)	
Recurrence of Grant	New ☒ Recurrent ☐ Other ☐ Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A
Does this grant require CEQA findings?	Yes ☐ No ☒
What Type of Grant is this?	Competitive ☐ Other Type ☒ Explain: FAA AIP Grant agreements are standard agreements that all airport proprietors must execute to receive federal grant funds for eligible projects.
County Match?	Yes ☐ Amount_____ or _____ % No ☒
How will the County Match be Fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	This grant will not create new positions.
Purpose of Grant Funds:	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.

The grant will reimburse eligible costs for the Project. The Project scope includes pavement rehabilitation along five taxiways (Taxiway "G", "H", "J", "K", "L"), including portions of the shoulders of the taxiways and main runway [2L – 20R] in order to extend the useful life of the taxiways and runway (including shoulders) as well as to prevent foreign object debris development within the airfield. The Project includes cold milling and re-paving, joint and crack sealing, crack sealing and rapid cure seal coating, and restriping at the impacted areas of the taxiways and runways (including shoulders). This portion of work is an extension of the current Airfield Lighting and Signage Improvements Project and is eligible for reimbursement. The AIP Grant would fund approximately $926,212.82 (80.59%) of the total eligible costs and the CARES Act will provide $223,077.18 (19.41%).

Board Resolution Required? (Please attach document to eForm)	Yes ☐ No ☒
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	N/A
Recommended Action/Special Instructions (Please specify below)	
Authorize the Airport Director or designee to accept and execute the AIP Grant with the FAA. Note: County Counsel will review and approve the Grant Agreement as to form.	
Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Barry A. Rondinella, Airport Director (949) 252-5183, BRondinella@ocair.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Barry A. Rondinella, Airport Director (949) 252-5183, BRondinella@ocair.com	

Revision to ASR and/or Attachments

RECEIVED
2021 JUL 19 PM 1:58
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

Date: **July 19, 2021**

To: Clerk of the Board of Supervisors

CC: County Executive Office

From: **Frank Kim, County Executive Office**

Re: ASR Control #: 21-000610, Meeting Date 7/27/21 , Item No. # 42

Subject: 2021 Redistricting Public Participation Plan

Explanation:

The 2021Redistricting Public Participation Plan must be heard on July 27, 2021, time certain, 10:00 A.M.

☐ Revised Recommended Action(s)

☐ Make modifications to the:

☐ Subject ☐ Background Information ☐ Summary ☐ Financial Impact

☐ Revised Attachments (attach revised attachment(s) and redlined copy(s))

RECEIVED
2021 JUL 21 PM 2:02
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

MEMORANDUM

To: Robin Stieler, Clerk of the Board

From: Chairman Andrew Do, First District
Supervisor Donald P. Wagner, Third District

Date: July 21, 2021

RE: Additional Action Item for S40A on the July 27, 2021 Board of Supervisors Meeting Agenda

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Please add the attached resolution to item S40A on the July 27, 2021 Board of Supervisors Meeting Agenda with a recommended action for the Board to adopt the resolution supporting the Orange County Veterans Cemetery in Anaheim Hills.

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
July 27, 2021

WHEREAS, the Orange County Board of Supervisors wholeheartedly endorses building a Veterans cemetery in Orange County and has allocated over 200 acres of county-owned land located at Gypsum Canyon near the intersection of the 91 freeway and 241 toll road in Anaheim Hills; and

WHEREAS, to honor and respect the men and women who served our country and who deserve the right to be buried in Orange County, we ask federal, state, and local governments to closely consider this proposed project as a benefit, not only to Orange County, but to the region as well; and

WHEREAS, the Orange County Board of Supervisors would like to move forward with planning and developing a site that would ultimately fulfill the promise made to Orange County Veterans; and

WHEREAS, the property at Gypsum Canyon has been deeded to the Orange County Cemetery District by the County of Orange for the purpose of building a Veterans cemetery; and

WHEREAS, the property's breathtaking view of the rolling hills remind many of Arlington Cemetery and we can bring historical pieces from the former El Toro Marine Corps Air Station, which closed in 1999, to the Veterans cemetery location in Anaheim Hills; and

WHEREAS, on July 1, 2021, numerous leaders representing Veteran organizations gathered at the proposed Orange County Veterans Cemetery site in Anaheim Hills and expressed their enthusiastic support for this location;

NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors does hereby support the Orange County Veterans Cemetery in Anaheim Hills, and further encourages federal, state, and local governments to support this much needed project.

MEMORANDUM

To: Robin Stieler, Clerk of the Board

From: Chairman Andrew Do, First District
Supervisor Donald P. Wagner, Third District

Date: July 16, 2021

RE: Item for the July 27, 2021 Board of Supervisors Meeting

S 40A

Please add this as a supplemental agenda item to the July 27, 2021 Board of Supervisors meeting for the Board to allocate $20 million exclusively for the site development of the Veterans portion of the Mountain Park Cemetery location in Anaheim.

RECEIVED
2021 JUL 16 AM 11:13
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

MEMORANDUM

To: Robin Stieler, Clerk of the Board

From: Chairman Andrew Do, Supervisor, 1st District

Date: 07/15/21

RE: Add Supplemental Item to 07/27/2021 Board Meeting Agenda –Appoint Dr. Dorothy O'Neill to the Orange County Human Relations Commission S40B

Please place a supplemental item on the agenda for the July 27, 2021 Board of Supervisors agenda to appoint Dr. Dorothy O'Neill to the at large seat on the Orange County Human Relations Commission for term 7/27/21 – 7/26/23.

cc: Chris Wangsaporn, Chief of Staff, BOS-1
Valerie Sanchez, Chief Deputy Clerk, COB

RECEIVED
2021 JUL 16 AM 11:11
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

APPLICATION FOR COUNTY OF ORANGE
BOARD, COMMISSION OR COMMITTEE

Return to:
Clerk of the Board of Supervisors
333 West Santa Ana Blvd., Suite 465
Santa Ana, California 92701
Website: www.ocgov.com/gov/cob/

(FOR COUNTY USE ONLY)

Instructions: Please complete each section below. Be sure to enter the title of the Board, Commission or Committee for which you desire consideration. For information or assistance, please contact the Clerk of the Board of Supervisor's Office at (714) 834-2206. Please print in ink or type.

NAME OF BOARD, COMMISSION, OR COMMITTEE TO WHICH YOU ARE APPLYING FOR MEMBERSHIP (SEE LIST AT HTTP://WWW.OCGOV.COM/GOV/COB/BCC/CONTACT):

OC Human Relations

SUPERVISORIAL DISTRICT IN WHICH YOU RESIDE: ☐ First ☐ Second ■ Third ☐ Fourth ☐ Fifth

APPLICANT NAME AND RESIDENCE ADDRESS:

Dorothy (First Name) Diana (Middle Name) O'Neill (Last Name)

(Street Address) Anaheim Hills (City) CA (State) (Zip Code)

(Home Phone Number) (Cell Phone Number)

(Email Address)

CURRENT EMPLOYER:

OCCUPATION/JOB TITLE:

BUSINESS ADDRESS:

BUSINESS PHONE NUMBER:

EMPLOYMENT HISTORY: Please attach a resume to this application and provide any information that would be helpful in evaluating your application.

ARE YOU A CITIZEN OF THE UNITED STATES: ■ YES ☐ NO

IF NO, NAME OF COUNTRY OF CITIZENSHIP:

ARE YOU A REGISTERED VOTER? ■ YES ☐ NO

IF YES, NAME COUNTY YOU ARE REGISTERED IN: Orange County

LIST ALL CURRENT PROFESSIONAL OR COMMUNITY ORGANIZATIONS AND SOCIETIES OF WHICH YOU ARE A MEMBER.

ORGANIZATION/SOCIETY	FROM (MO./YR.)	TO (MO./YR.)

WITHIN THE LAST FIVE YEARS, HAVE YOU BEEN AFFILIATED WITH ANY BUSINESS OR NONPROFIT AGENCY(IES)? ☐YES ■ NO

DO YOU OWN REAL OR PERSONAL PROPERTY OR HAVE FINANCIAL HOLDING WHICH MIGHT PRESENT A POTENTIAL CONFLICT OF INTEREST? ☐YES ■ NO

HAVE YOU BEEN CONVICTED OF A FELONY OR MISDEMEANOR CRIME SINCE YOUR 18TH BIRTHDAY? YOU ARE NOT REQUIRED TO DISCLOSE ANY OF THE FOLLOWING: ARRESTS OR DETENTIONS THAT DID NOT RESULT IN A CONVICTION; CONVICTIONS THAT HAVE BEEN JUDICIALLY DISMISSED, EXPUNGED OR ORDERED SEALED; INFORMATION CONCERNING REFERRAL TO AND PARTICIPATION IN ANY PRETRIAL OR POSTRIAL DIVERSION PROGRAM; AND CERTAIN DRUG RELATED CONVICTIONS THAT ARE OLDER THAN TWO YEARS, AS LISTED IN CALIFORNIA LABOR CODE § 432.8 (INCLUDING VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 11357(B) AND (C), 11360(C) 11364, 11365 AND 11550 – AS THEY RELATE TO MARIJUANA)?

☐YES ■ NO

IF YES, PLEASE EXPLAIN AND ATTACH ADDITIONAL SHEETS, IF NECESSARY.

PLEASE BRIEFLY EXPLAIN WHY YOU WISH TO SERVE ON THIS BOARD, COMMITTEE, OR COMMISSION. ATTACH ADDITIONAL SHEETS, IF NECESSARY.

I will draw on my expertise from years of caring for my patients and listening to the needs and concerns of Orange County families. I look forward to serving my community.

DATE: 04/23/21 **APPLICANTS SIGNATURE:** Bay. D.

CLERK OF THE BOARD OF SUPERVISORS USE ONLY – DO NOT WRITE BELOW THIS LINE

Date Received: _____ Received by: _____
Deputy Clerk of the Board of Supervisors

Date referred: _____

To: ☐ BOS District 1 ☐ BOS District 2 ☐ BOS District 3 ☐ BOS District 4 ☐ BOS District 5

☐ All BOS ☐ BCC Contact Person Name _____

Dr. Dorothy O'Neill Psy. D

Dr. O'Neill specializes in Prolonged Exposure (PE) a therapy that is used when working with PTSD. She works with veterans and active-duty military and received her training in PE with the Center for Deployment Psychology (CDP). She received additional training with Emory University, Atlanta Georgia. Dr. O'Neill was part of the consultant in training program

Dr. O'Neill is a Certified Integrated Behavioral Couples Therapy (IBCT) and works with couples

In addition to working in her private practice she presents on couples' therapy and Prolonged Exposure and facilitates workshops around the country.

Dr. O'Neill is an adjunct professor at Cal. State Northridge and Alliant International University. Irvine and LA. She has been a guest speaker at Chapman University, Long Beach University, Cal-State Northridge University and Alliant University, Irvine and LA, CCHF, Oklahoma Conference, CCHF, Cincinnati Conference

Dr. O'Neill interned at Los Angeles Christian Health Clinic in Skid Row working with trauma and at Saddleback Church Lake Forest

She has authored a book on Successful marriages O'Neill, D.D. (2017) *The Rules of Engagement: Learning from Nine Couples Who Made Marriage Work.* New Jersey: BookBaby Publishers
Her second book is in production: *Soul to Sole coparenting through Divorce in the "New Family" BookBaby* Publishers

She has been published in several publications:

O'Neill, D. (2012). We Wait in Hope. *Christian Community Health Fellowship, Inc.* V32. No.1
O'Neill. D. (2018) *Growing your marriage Side by side;* Grapevine Magazine New Zealand
O'Neill. D (2020) *5 Successful Co-Parenting Strategies for Divorced Parents* Marriage.com
TheEpochTimes.com: (2021) Anaheim Therapist Helps Families with Anxiety amid Lockdowns
California Insider (2021) Interview on Children and the Pandemic

Dr. O'Neill is originally from the United Kingdom and has lived in the USA for the past 40 years. She is the mother of two daughter and lives in Anaheim Hills

She graduated with her Doctorate in Clinical Psychology Couples and Family Therapy, at Alliant International University, Irvine CA.

Written Concurrence for Out-of-District Appointment to Board, Commission, or Committee

Supervisor Proposing Appointment: Andrew Do, First District Date: 7/15/2021

Board, Commission, or Committee: Orange County Human Relations Commission

Proposed Appointee's Name: Dr. Dorothy O'Neill

Proposed Appointee's City of Residence: Anaheim Hills

Concurring Supervisor's Signature:

Concurring Supervisor: Donald Wagner, Third District

MEMORANDUM

To: Robin Stieler, Clerk of the Board

From: Chairman Andrew Do, Supervisor, 1st District

Date: 07/15/21

RECEIVED
2021 JUL 16 AM 11:10
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

RE: Add Supplemental Item to 07/27/2021 Board Meeting Agenda –Appoint Marcos Anthony Villa to OC Veterans Advisory Council

S40C

Please place a supplemental item on the agenda for the July 27, 2021 Board of Supervisors agenda to appoint Marcos Anthony Villa to the at large seat on the OC Veterans Advisory Council for term (03/05/20 – 03/04/22).

cc: Chris Wangsaporn, Chief of Staff, BOS-1
Valerie Sanchez, Chief Deputy Clerk, COB

APPLICATION FOR COUNTY OF ORANGE BOARD, COMMISSION OR COMMITTEE

Return to:
Clerk of the Board of Supervisors
333 West Santa Ana Blvd., Suite 465
Santa Ana, California 92701
Website: www.ocgov.com/gov/cob/

(FOR COUNTY USE ONLY)

Instructions: Please complete each section below. Be sure to enter the title of the Board, Commission or Committee for which you desire consideration. For information or assistance, please contact the Clerk of the Board of Supervisor's Office at (714) 834-2206. Please print in ink or type.

NAME OF BOARD, COMMISSION, OR COMMITTEE TO WHICH YOU ARE APPLYING FOR MEMBERSHIP (SEE LIST AT HTTP://WWW.OCGOV.COM/GOV/COB/BCC/CONTACT):

VETERAN ADVISORY COUNCIL

SUPERVISORIAL DISTRICT IN WHICH YOU RESIDE: ☐ **First** ☐ **Second** ☐ **Third** ☐ **Fourth** ☒ **Fifth**

APPLICANT NAME AND RESIDENCE ADDRESS:

MARCOS (First Name) ANTHONY (Middle Name) VILLA (Last Name)

Street Address | City | State | Zip Code

Home Phone Number | Cell Phone Number

Email Address

CURRENT EMPLOYER: NEW VISTA SCHOOL / NEW VISTA CAREER ACADEMY

OCCUPATION/JOB TITLE: DIRECTOR

BUSINESS ADDRESS:

BUSINESS PHONE NUMBER:

EMPLOYMENT HISTORY: Please attach a resume to this application and provide any information that would be helpful in evaluating your application.

ARE YOU A CITIZEN OF THE UNITED STATES: ☒ **YES** ☐ **NO**

IF NO, NAME OF COUNTRY OF CITIZENSHIP:

ARE YOU A REGISTERED VOTER? ☒ **YES** ☐ **NO**

IF YES, NAME COUNTY YOU ARE REGISTERED IN: LAGUNA HILLS, ORANGE COUNTY

LIST ALL CURRENT PROFESSIONAL OR COMMUNITY ORGANIZATIONS AND SOCIETIES OF WHICH YOU ARE A MEMBER.

ORGANIZATION/SOCIETY	FROM (MO./YR.)	TO (MO./YR.)
VFW, Dana Point	03/2014	Current
American Legion, Newport	01/2016	Current
Veteran Business Network of OC	02/2021	Current
Compton Veterans	01/2020	Current

WITHIN THE LAST FIVE YEARS, HAVE YOU BEEN AFFILIATED WITH ANY BUSINESS OR NONPROFIT AGENCY(IES)? ☒ YES ☐ NO

DO YOU OWN REAL OR PERSONAL PROPERTY OR HAVE FINANCIAL HOLDING WHICH MIGHT PRESENT A POTENTIAL CONFLICT OF INTEREST? ☐ YES ☒ NO

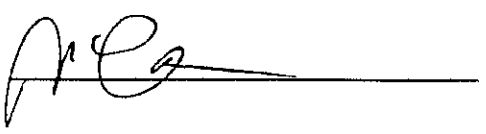
HAVE YOU BEEN CONVICTED OF A FELONY OR MISDEMEANOR CRIME SINCE YOUR 18TH BIRTHDAY? YOU ARE NOT REQUIRED TO DISCLOSE ANY OF THE FOLLOWING: ARRESTS OR DETENTIONS THAT DID NOT RESULT IN A CONVICTION; CONVICTIONS THAT HAVE BEEN JUDICIALLY DISMISSED, EXPUNGED OR ORDERED SEALED; INFORMATION CONCERNING REFERRAL TO AND PARTICIPATION IN ANY PRETRIAL OR POSTRIAL DIVERSION PROGRAM; AND CERTAIN DRUG RELATED CONVICTIONS THAT ARE OLDER THAN TWO YEARS, AS LISTED IN CALIFORNIA LABOR CODE § 432.8 (INCLUDING VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 11357(B) AND (C), 11360(C) 11364, 11365 AND 11550 – AS THEY RELATE TO MARIJUANA)?

☐ YES ☒ NO

IF YES, PLEASE EXPLAIN AND ATTACH ADDITIONAL SHEETS, IF NECESSARY.

PLEASE BRIEFLY EXPLAIN WHY YOU WISH TO SERVE ON THIS BOARD, COMMITTEE, OR COMMISSION. ATTACH ADDITIONAL SHEETS, IF NECESSARY.

I wish to serve on the Veteran Advisory Council to advocate for and bring resources to the Veteran community.

DATE: 3/31/2021 **APPLICANTS SIGNATURE:** 

CLERK OF THE BOARD OF SUPERVISORS USE ONLY – DO NOT WRITE BELOW THIS LINE

Date Received: _____ Received by: _____
Deputy Clerk of the Board of Supervisors

Date referred: _____

To: ☐ BOS District 1 ☐ BOS District 2 ☐ BOS District 3 ☐ BOS District 4 ☐ BOS District 5

☐ All BOS ☐ BCC Contact Person Name _____

MARCOS VILLA

Current: Director New Vista Career Academy
Location:
Phone:
Email:

Performance-Focused Leader

Marcos Villa is the Director of the New Vista Career Academy, a post-secondary vocational program for adults with Autism Spectrum Disorder (ASD). The mission of the New Vista Career Academy is to help individuals with high functioning autism learn skills for the adult world specific to managing and maintaining employment and healthy living.

Mr. Villa has been instrumental in the growth of the New Vista School Career Academy. In 2019 the program became an official vendor of the Regional Center of Orange County. Working with numerous local for-profit and non-profit organizations, Mr. Villa has expanded the work place training options for clients, as well as providing community and volunteer outreach.

Under his leadership, the Career Academy has implemented transitional skills education programs, public speaking, health and fitness instruction, client leadership roles, community volunteer engagement, and daily living directives.

Mr. Villa's goal is to continue to grow the vocational and educational programs for the Career Academy, and provide individualized instruction for clients. He believes that all adults deserve the opportunity to reach their potential.

PROFESSIONAL SYNOPSIS

- Mr. Villa is a United States Marine veteran. He served in Iraq from March 2009 to October 2009 and received numerous awards in program management
- Served as a finance manager for Marine Aviation Group 39
- Oversaw budgets for 8 companies Squadrons
- Served as finance trainer and platoon sergeant
- Received nonprofit leadership achievement for his work with Toys for Tots
- He is a horticulturist dedicated to developing pathways that provide access to resources for disadvantaged youth and military veterans. Mr. Villa helped with creating educational programs and sustainable garden systems for Culinary Arts Kids Eat, and Los Angeles
- Mr. Villa serves on the advisory board for Seasonally Fresh as a veteran and micro-farm specialist.
- Serves on the Chapman Policy Institute as an education program specialist.
- Serves the the Veteran Business Network of OC as a Director of Fundraising.
- Serves on Compton Veterans as a Treasurer.

EDUCATION

MBA Graduate, Brandman University

E

MILITARY/CIVILIAN WORK EXPERIENCE

New Vista Career Academy **08/2017 – Current**

Laguna Hills, Ca **Hours per week: 40**
Executive Director: Bill Bermingham 949-455-1270 (contact me first)

Program Director

The Career Academy Program Director conceives, organizes, promotes and implements effective education and career development programs that help students realize their career pathway. The Program Director is responsible for managing programs and operations ensuring a positive experience for participants and their families. The Program Director must understand the driving forces behind student behavior and support positive interventions that are carried out by staff through effective training and development. This job involves both short- and long-term programs that help young adults transform into responsible and well-trained employees ready to join the workforce.

- Develops and implements operational infrastructure for accepting, onboarding, and developing programs for incoming students.
- Evolves internship program to help students generalize skills for appropriate
- communications and behaviors on the job.
- Creates and implements a methodology for determining viable career paths for students.
- Evaluates and reports on student progress through standardized vocational assessments of students.
- Provides post-secondary educational supports for each student for academics and employment.
- Aligns Special Education policies and procedures with the program, as well as state and federal guidelines for the educational requirements for special education students.
- Develops and models excellent interpersonal, communication, organizational and time management skills.
- Manages and grows job coaching staff, maintains forward looking semester class schedules, and manages staff assignments inclusive of direct and adjunct employees.
- Works with all staff and when necessary community representatives to establish relationships for the Academy's Transition Program, curriculum, and instructional resources (and their evaluation) on a systematic basis.

- Coordinates appraisal, placement, transfer, and dismissal procedures for students receiving services.
- Works with the Executive Director to clearly define expectations for staff performance regarding instructional strategies, classroom management, and communication with the parents, and provides in-service training and encouragement for all staff members.
- Recognizes the line of authority, personnel policies and regulations, the limits of responsibility, and the importance of conferring with superiors and subordinates in a professional manner.
- Interviews, recommends, orients, matches staff members with job assignments, and evaluates all staff within the Program.
- Develop the budget for Transition Program based on documented projected needs in a fiscally responsible manner.
- Through innovation and creative approaches, identifies and builds a common vision that produces objective decisions without procrastination or bias.
- Projects a positive image to the community through the dissemination of ideas, information, and responsiveness to parental concerns.
- Directs planning activities and implements programs based on the identification, analysis, and applied research derived from collaborative staff efforts.
- Provides leadership in a professional and ethical manner which fosters a clear sense of mission of excellence and achievement.
- Communicates and promotes high expectations for staff and students through the recognition of excellence and achievement.
- Ensures the dissemination of ideas and information to all staff regarding the effective resolution of conflicts in a timely manner.
- Initiates and supports programs and actions that facilitate an environment that are caring and conducive to the achievement of the Academy's mission.
- Strives to improve leadership skills through self-initiated professional growth and development activities by utilizing information and insights gained in professional efforts for self-improvement.

Volt Information Sciences **04/2014 – 06/2015**

Orange, Ca 92865 **Hours per week: 40**

Financial Analyst

Developed, maintained, and managed financial reports for national and global vendor accounts. Used cyber security technologies to review and analyze data and determined financial viability for vendor accounts. Prepared Federal tax documents and managed financial reporting systems. Coordinated fiscal closing and submitted reporting documents the IRS.

United States Marine Corp **06/2009 – 04/2014**

San Diego, Ca 92058 **Hours per week: 40**

Fiscal Manager

Managed funds and planned logistics support for nine MCAS Aircraft Squadron accounts. Developed financial plans and implemented strategies aligned to mission success. Monitored transferred and maintained funds totaling in $6.4M. Supervised, audited, and processed 8,400 travel claims that accounted for $2.8M. Implemented and directed fiscal closing procedures. Citi Bank Account Manager responsibilities included setting up, monitoring and maintaining government travel cards. Informed and educated travelers about responsibilities and Federal guidelines. Trained senior and executive leaders, audited internal managing systems and implemented strategies that enhanced operations. Reported financial metrics to executive leadership. Worked together with senior leaders to develop plans that supported aviation logistics, supply-chain operations, and executive directive.

MILITARY/CIVILIAN EDUCATION

Brandman University
Irvine, Ca
Degree: November / 2020
Major: MBA
Minor: Organizational Leadership
GPA: 3.45

Brandman University
Irvine, Ca
Degree: May / 2017
Major: Business Administration
GPA: 3.0

JOB RELATED TRAINING

Nonprofit Executive Leadership, Brandman University
2021

ServeSafe Food Protection Manager, Archis Acres
2016 - 2021

Sustainable Agriculture Training, Cal Poly Pomona
2016

Microsoft, Office Suites, Brandman University
2016

Excel Level 2, New Horizon
2014

Sergeants Leadership Course, USMC

2014

Supply Chain Management Technician, USMC
2006

ADDITIONAL INFORMATION

Demonstrated ability to develop and implement operations procedures, performance managing programs. Exceptional communications and team building skills. Diplomatic and collaborative partner with experience developing and implementing community and economic incentive programs. Intermediate technical and software manipulation, and customer relations managing skill and experience. Strong organizational skills with experience supporting and leading community projects.

Created, developed, and implemented a state approved job and life skill program for young adults with autism and learning disabilities.

Written Concurrence for Out-of-District Appointment to Board, Commission, or Committee

Supervisor Proposing Appointment: Andrew Do, First District Date: 04/12/21

Board, Commission, or Committee: OC Veterans Advisory Council

Proposed Appointee's Name: Marcos Villa

Proposed Appointee's City of Residence: Laguna Hills

Concurring Supervisor's Signature:

Concurring Supervisor: Lisa Bartlett, Fifth District

MEMORANDUM

To: Robin Stieler, Clerk of the Board

From: Chairman Andrew Do, Supervisor, 1st District

Date: 07/15/21

RE: Add Supplemental Item to 07/27/21 Board Meeting Agenda –Re-Appoint Mark L. Monin to the Airport Land Use Commission for Orange County

S40D.

Please place a supplemental item on the agenda for the July 27, 2021 Board of Supervisors agenda to re-appoint Mark L. Monin to the at large seat on the Airport Land Use Commission for Orange County complete term ending to 05/06/24.

cc: Chris Wangsaporn, Chief of Staff, BOS-1
Valerie Sanchez, Chief Deputy Clerk, COB

RECEIVED
2021 JUL 16 AM 11:11
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

APPLICATION FOR COUNTY OF ORANGE BOARD, COMMISSION OR COMMITTEE

(FOR COUNTY USE ONLY)

Return to:
Clerk of the Board of Supervisors
333 West Santa Ana Blvd., Suite 465
Santa Ana, California 92701
Website: www.ocgov.com/gov/cob/

Instructions: Please complete each section below. Be sure to enter the title of the Board, Commission or Committee for which you desire consideration. For information or assistance, please contact the Clerk of the Board of Supervisor's Office at (714) 834-2206. Please print in ink or type.

NAME OF BOARD, COMMISSION, OR COMMITTEE TO WHICH YOU ARE APPLYING FOR MEMBERSHIP (SEE LIST AT HTTP://WWW.OCGOV.COM/GOV/COB/BCC/CONTACT):

Airport Land Use Commission (ALUC)

SUPERVISORIAL DISTRICT IN WHICH YOU RESIDE: ☐ **First** ☐ **Second** ☐ **Third** ☐ **Fourth** ■ **Fifth**

APPLICANT NAME AND RESIDENCE ADDRESS:

Mark (First Name) Louis (Middle Name) Monin (Last Name)

Street Address | City | State | Zip Code

Home Phone Number | Cell Phone Number

Email Address

CURRENT EMPLOYER: El Toro Water District

OCCUPATION/JOB TITLE: Director

BUSINESS ADDRESS:

BUSINESS PHONE NUMBER:

EMPLOYMENT HISTORY: Please attach a resume to this application and provide any information that would be helpful in evaluating your application.

ARE YOU A CITIZEN OF THE UNITED STATES: ■ **YES** □ **NO**

IF NO, NAME OF COUNTRY OF CITIZENSHIP:

ARE YOU A REGISTERED VOTER? ■ **YES** □ **NO**

IF YES, NAME COUNTY YOU ARE REGISTERED IN:

LIST ALL CURRENT PROFESSIONAL OR COMMUNITY ORGANIZATIONS AND SOCIETIES OF WHICH YOU ARE A MEMBER.

ORGANIZATION/SOCIETY	FROM (MO./YR.)	TO (MO./YR.)
Independant Special Districts of Orange County (President)	01/03/2015	Present
Water Advisory Committee of Orange County (Vice Chairman)	01/03/2015	Present
Association of California Water Agencies	01/03/2015	Present

WITHIN THE LAST FIVE YEARS, HAVE YOU BEEN AFFILIATED WITH ANY BUSINESS OR NONPROFIT AGENCY(IES)? ■**YES** □ **NO**

DO YOU OWN REAL OR PERSONAL PROPERTY OR HAVE FINANCIAL HOLDING WHICH MIGHT PRESENT A POTENTIAL CONFLICT OF INTEREST? □**YES** ■ **NO**

HAVE YOU BEEN CONVICTED OF A FELONY OR MISDEMEANOR CRIME SINCE YOUR 18TH BIRTHDAY? YOU ARE NOT REQUIRED TO DISCLOSE ANY OF THE FOLLOWING: ARRESTS OR DETENTIONS THAT DID NOT RESULT IN A CONVICTION; CONVICTIONS THAT HAVE BEEN JUDICIALLY DISMISSED, EXPUNGED OR ORDERED SEALED; INFORMATION CONCERNING REFERRAL TO AND PARTICIPATION IN ANY PRETRIAL OR POSTRIAL DIVERSION PROGRAM; AND CERTAIN DRUG RELATED CONVICTIONS THAT ARE OLDER THAN TWO YEARS, AS LISTED IN CALIFORNIA LABOR CODE § 432.8 (INCLUDING VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 11357(B) AND (C), 11360(C) 11364, 11365 AND 11550 – AS THEY RELATE TO MARIJUANA)?

□**YES** ■ **NO**

IF YES, PLEASE EXPLAIN AND ATTACH ADDITIONAL SHEETS, IF NECESSARY.

PLEASE BRIEFLY EXPLAIN WHY YOU WISH TO SERVE ON THIS BOARD, COMMITTEE, OR COMMISSION. ATTACH ADDITIONAL SHEETS, IF NECESSARY.

I am Vice Chairman of ALUC now, was firefighter at OCFA.

Pilot for 44 years,involved with many OC pilot organizations

DATE: 05/06/2021 **APPLICANTS SIGNATURE:** Mark J Mohr

CLERK OF THE BOARD OF SUPERVISORS USE ONLY – DO NOT WRITE BELOW THIS LINE

Date Received: _____ Received by: _____
Deputy Clerk of the Board of Supervisors

Date referred: _____

To: □ BOS District 1 □ BOS District 2 □ BOS District 3 □ BOS District 4 □ BOS District 5

□ All BOS □ BCC Contact Person Name _____

Mark L. Monin

Mark Monin serves as Senior Vice President at Raymond James. With over 40 years in the securities industry, Mark specializes in executive services, 401k, endowments, foundations, high level financial planning and asset management. He provides an array of services relating to executive compensation such as stock option analysis/exercise in addition to creating liquidity and managing risk in restricted and control stock. He also creates diversification programs (Rule 10b5-1 plans), 401k design, portfolio construction and monitoring, and ongoing client service. Mark is also a former firefighter and has experience in Aeronautical Engineering/Aviation industry, with pilot Data & FAA Licenses private, commercial, instrument and multi engine FAA licenses and has over 2000 total hours PIC. In the last 6 years Mark has gotten into politics and is a Director with the El Toro Water District, President with the Independent Special Districts of Orange County and Vice Chairman of the Orange County Airport Commission (ALUC) and Vice Chairman of The Water Advisory Committee of Orange County (WACO).

Professional Experience

Financial Investment/Securities Industry

- Raymond James Financial Services, Inc., Financial Advisor, Newport Beach 2015- Present
- Raymond James & Associates, Assistant Manager, Newport Beach 2009-2015
- Oppenheimer & Co. Newport Beach, California 2005-2009
- Morgan Stanley, Sales Manager / Financial Advisor 1998 - 2005
- Merrill Lynch, Manager / Financial Advisor 1994 - 1998
- Prudential Securities, Assistant Manager 1991 – 1994

Aviation Experience / Aviation Organizations / Community Involvement

- Orange County Airport Commission (ALUC) Vice Chairman, Commissioner
  - Orange County /John Wayne, Joint Forces Training Base Los Alamitos, and Fullerton Airports
- Cal Baptist University, Professor, Riverside CA
  - Aviation Law & Aviation Finance 2015-Present
- Pilot Data & FAA Licenses
  - Private
  - Commercial
  - Instrument
  - Multi engine
  - FAA licenses
  - Over 2000 total hours PIC since 1977
- Civil Air Patrol (Auxiliary United States Air Force)
  - *Aerial and ground search & rescue,*
- *Civil Air Patrol Aerial Disaster Inspection, Orange County, CA*
  - *DEA and Customs assistance in aerial surveillance, air transport from* 1992-1996
- Flying Samaritans/ Liga
  - Free medical clinics; fly physicians/medical professionals to Mexico 1995-present
- Angel Flight Pilot
  - Provides transportation to medical treatment for those who cannot afford/tolerate public transportation, 1998-present
- Southern California Pilots Association
  -
- Orange County Pilots Association (OCPA)
  - OCPA is an association of aviation enthusiasts with the purpose of promoting aviation at the Orange County Airport
- Experimental Aviation Association (EAA)
  - Experimental Aircraft Association based in Oshkosh, Wisconsin, encourages and supports recreational aviation.
  -

Political Experience (Elected Official)

- EL Toro Water District, Director
  - Formed in 1960, Population served is almost 50,000 customers, service area covers 5,430 acres, 57 employees, Distribution system covers 170 miles of water lines, 2015-Present

- Independent Special District of Orange County, President
  - Services the Special Districts of Orange County of which there are 28 Special Districts as members 2015-Present

The Water Advisory Committee of Orange County (WACO) Vice Chairman 2021- Present

Water Experience

- EL Toro Water District, Director
  - Formed in 1960, Population served is almost 50,000 customers, service area covers 5,430 acres, 57 employees, Distribution system covers 170 miles of water lines, 2015-Present

- Association of Water Agencies (ACWA) Finance Committee Member
  - Formulate Budgets and Finance policies 2015-Present

- Association of Water Agencies (ACWA) Educational Committee Member
  - Organize and moderate educational programs for ACWA conferences 2015-Present

- Association of Water Agencies (ACWA) Investment Committee Member
  - Analyze investments (ACWA has made or is considering making

Real Estate Experience

- California Department of Real Estate, 1988 – Present (33 Years)
- Real Estate Consultant

Firefighter Experience

- Orange County Fire Authority
  - *PCF/ Firefighter/Engineer/ search & rescue/ medical training* (first responder) 1988-1995
- Twin District Fire Department, *Lancaster, NY*
  - *Firefighter/ Engineer/ search & rescue/ medical training* (first responder) since 2006
- Lancaster Fire Department, *Lancaster, NY*
  - *Firefighter/ Engineer/ search & rescue/ medical training* (first responder) 1982-1984
- Egypt Fire Department, Rochester/Perrington, NY
  - *Firefighter/ Engineer/ search & rescue/ medical training* (first responder) 1985-1987

Boards/Committees

- El Toro Water District, Board of Directors 2015 – Present
- Independent Special District of Orange County President 2015-Present
- Orange County Airport Commission (ALUC) Vice Chairman, Commissioner
- City of Laguna Woods Public Safety Committee Chairman 2012-2015
- City of Laguna Woods Landscape Committee, Past Member
- ACWA Finance / Education/ Investment Committees
- Newport Beach Chamber of Commerce, Past Member
- Irvine Chamber of Commerce, Past Member

Education/Licensure

- Pepperdine University, Malibu California, Masters in Business Administration
- The Wharton School, University Of Pennsylvania, Senior Financial Advisor
- The Wharton School, University Of Pennsylvania, Management Training Program
- Institute of Investment Management Consulting, Investment Management Consultant
- The Institute of Business & Finance: Certified Annuity & Fund Specialist
- Board Certified in Asset Allocation
- Canisius College, Buffalo New York, BS/Finance
- University of Buffalo, Aeronautical Engineering
- Federal Aviation Administration, Multi Engine, 2000
- New York Stock Exchange, Series 8, Branch Manager, 1990
- National Association of Securities Dealers, Series 65, Financial Planning, since 1989
- California Department of Real Estate, since 1988
- National Association of Securities Dealers, Series 3, Futures, since 1988
- National Association of Securities Dealers, Series, Options Principal, since 1983
- National Association of Securities Dealers, Series 24, Principal Supervisor, since 1983
- National Association of Securities Dealers, Series 63, State Licensing, since 1981
- Securities Licensed in California, Colorado, Connecticut, Delaware, Georgia, Iowa, Illinois, Indiana, Louisiana, Maryland, New Jersey, New York, Ohio, Pennsylvania
- National Association of Securities Dealers, Series 7, 1981, Financial Advisor
- Federal Aviation Administration, Commercial, 1979
- Federal Aviation Administration, Instrument, 1978
- Federal Aviation Administration, Private, 1977

Written Concurrence for Out-of-District Appointment to Board, Commission, or Committee

Supervisor Proposing Appointment: Andrew Do, First District Date: 06/07/21

Board, Commission, or Committee: Airport Land Use Commission

Proposed Appointee's Name: Mark Louis Monin

Proposed Appointee's City of Residence: Laguna Woods

Concurring Supervisor's Signature: Lisa A. Bartlett

Concurring Supervisor: Lisa Bartlett, Fifth District

MEMORANDUM

To: Clerk of the Board

From: Supervisor Donald P. Wagner, Third District

Date: July 16, 2021

RE: Appointment of Laura Thomas to the Orange County Waste Management Commission

S40E

I would like to appoint Laura Thomas to the Orange County Waste Management Commission for the term of January 19, 2020 to January 18, 2022. Laura Thomas will be filling the Third District seat last served by Beth Haney. Please add this as a supplemental item to the Tuesday, July 27, 2021 Board of Supervisors meeting.

RECEIVED
2021 JUL 16 PM 3:09
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

DocuSign Envelope ID: BAC99A75-6725-4EE8-89A6-86C593105CFD

APPLICATION FOR COUNTY OF ORANGE BOARD, COMMISSION OR COMMITTEE

(FOR COUNTY USE ONLY)

Return to:
Clerk of the Board of Supervisors
333 West Santa Ana Blvd., Suite 465
Santa Ana, California 92701
Website: www.ocgov.com/gov/cob/

Instructions: Please complete each section below. Be sure to enter the title of the Board, Commission or Committee for which you desire consideration. For information or assistance, please contact the Clerk of the Board of Supervisor's Office at (714) 834-2206. Please print in ink or type.

NAME OF BOARD, COMMISSION, OR COMMITTEE TO WHICH YOU ARE APPLYING FOR MEMBERSHIP (SEE LIST AT HTTP://WWW.OCGOV.COM/GOV/COB/BCC/CONTACT):

OC Waste Management Commission

SUPERVISORIAL DISTRICT IN WHICH YOU RESIDE: ☐ First ☐ Second ☐ Third ☐ Fourth ☐ Fifth

APPLICANT NAME AND RESIDENCE ADDRESS:

Laura	Jean	Thomas
First Name	Middle Name	Last Name

	Orange	Ca.	
Street Address	City	State	Zip Code

Home Phone Number _____ Cell Phone Number _____

Email Address _____

CURRENT EMPLOYER: _____

OCCUPATION/JOB TITLE: _____

BUSINESS ADDRESS _____

BUSINESS PHONE NUMBER: _____

EMPLOYMENT HISTORY: Please attach a resume to this application and provide any information that would be helpful in evaluating your application.

ARE YOU A CITIZEN OF THE UNITED STATES: ☒ YES ☐ NO

IF NO, NAME OF COUNTRY OF CITIZENSHIP: _____

ARE YOU A REGISTERED VOTER? ☒ YES ☐ NO

IF YES, NAME COUNTY YOU ARE REGISTERED IN: Orange

LIST ALL CURRENT PROFESSIONAL OR COMMUNITY ORGANIZATIONS AND SOCIETIES OF WHICH YOU ARE A MEMBER.

ORGANIZATION/SOCIETY	FROM (MO./YR.)	TO (MO./YR.)
See attached resume		

WITHIN THE LAST FIVE YEARS, HAVE YOU BEEN AFFILIATED WITH ANY BUSINESS OR NONPROFIT AGENCY(IES)? ☒ **YES** ☐ **NO**

DO YOU OWN REAL OR PERSONAL PROPERTY OR HAVE FINANCIAL HOLDING WHICH MIGHT PRESENT A POTENTIAL CONFLICT OF INTEREST? ☐ **YES** ☒ **NO**

HAVE YOU BEEN CONVICTED OF A FELONY OR MISDEMEANOR CRIME SINCE YOUR 18TH BIRTHDAY? YOU ARE NOT REQUIRED TO DISCLOSE ANY OF THE FOLLOWING: ARRESTS OR DETENTIONS THAT DID NOT RESULT IN A CONVICTION; CONVICTIONS THAT HAVE BEEN JUDICIALLY DISMISSED, EXPUNGED OR ORDERED SEALED; INFORMATION CONCERNING REFERRAL TO AND PARTICIPATION IN ANY PRETRIAL OR POSTRIAL DIVERSION PROGRAM; AND CERTAIN DRUG RELATED CONVICTIONS THAT ARE OLDER THAN TWO YEARS, AS LISTED IN CALIFORNIA LABOR CODE § 432.8 (INCLUDING VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 11357(B) AND (C), 11360(C) 11364, 11365 AND 11550 – AS THEY RELATE TO MARIJUANA)?

☐ **YES** ☒ **NO**

IF YES, PLEASE EXPLAIN AND ATTACH ADDITIONAL SHEETS, IF NECESSARY.

PLEASE BRIEFLY EXPLAIN WHY YOU WISH TO SERVE ON THIS BOARD, COMMITTEE, OR COMMISSION. ATTACH ADDITIONAL SHEETS, IF NECESSARY.

To represent the OPA County Residents in consistant service and fees charged.

DATE: 7/15/2021 **APPLICANTS SIGNATURE:** DocuSigned by: Laura J. Thomas 52CA5D4DEAA54A7...

CLERK OF THE BOARD OF SUPERVISORS USE ONLY – DO NOT WRITE BELOW THIS LINE

Date Received: _____ Received by: _____
Deputy Clerk of the Board of Supervisors

Date referred: _____

To: ☐ BOS District 1 ☐ BOS District 2 ☐ BOS District 3 ☐ BOS District 4 ☐ BOS District 5

☐ All BOS ☐ BCC Contact Person Name _____

DocuSign Envelope ID: BAC99A75-6725-4EE8-89A6-86C593105CFD

Resume

Laura Thomas

Resident and Property Owner in Orange Park Acres (39 years) 1982 - Present

Community Volunteer

Orange Park Association	
Vice President	2020 – Present
Past President	2013 – 2018
Director	2019 – 2019
	2006 - 2013
Director, Past President	1991 – 1999
Orange Park Acres Real Estate Committee	2005 – Present
Chair	2019 - Present
Orange Park Acres Advisory Committee	
Chair	2013 - 2018
Member	2006 - 2018
Orange Park Acres Women's League	
Member, Past President	1991 - Present
Gary Bandy Volunteer of the Year	2014
OPA 4th of July Parade Grand Marshall	2017

DocuSign Envelope ID: BAC99A75-6725-4EE8-89A6-86C593105CFD

Orange Chamber of Commerce	
Member, Ambassador	1993 - Present
Ambassador of the Year	
Past Board Director	
OC Parks	
Ranger Reserve/Equestrian Team	2000 - 2006
Business Profession	
Realtor	1991 - Present
Century 21 Masters	2014 - Present

Memorandum

Date: July 21, 2021

To: Robin Stieler, Clerk of the Board

From: Katrina Foley, Second District Supervisor

Re: Item for the July 27, 2021 Meeting of the Board of Supervisors

S4OF

Please add an item to the agenda for the July 27, 2021 Board of Supervisors meeting to consider adoption of the attached Resolution to request that the United States Army Corp of Engineers immediately fund and proceed with Stage 13 of the Surfside-Sunset Beach Sand Nourishment Project.

RESOLUTION NO. ___

A RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, CALIFORNIA REQUESTING THE UNITED STATES ARMY CORPS OF ENGINEERS FUND AND IMMEDIATELY PROCEED WITH SURFSIDE-SUNSET BEACH NOURISHMENT PROJECT STAGE 13 FROM ANAHEIM BAY HARBOR TO NEWPORT BAY IN ORANGE COUNTY CALIFORNIA

WHEREAS, the longshore current carries beach sand southward along the California coast, nourishing the beaches of Orange County from Anaheim Bay Harbor through Huntington Beach to Newport Beach; and

WHEREAS, Prior to onshore structural development between the San Gabriel River outlet and Newport Bay, local beaches received sand from flood runoff of the Los Angeles, San Gabriel, and Santa Ana rivers; and

WHEREAS, In 1942, the United States constructed jetties at Anaheim Bay to serve the Seal Beach Naval Weapons Station, adjacent to Surfside Beach. Waves reflected off the East Jetty caused strong, localized southward-flowing longshore currents near the jetty. These currents cause severe down coast erosion at both Surfside Beach in Seal Beach, and Sunset Beach in Huntington Beach. In response, and without any formal Congressional action, the U.S. Army Corps of Engineers initiated beach replenishments in 1945, 1946 and 1956; and

WHEREAS, The U.S. Army Corps of Engineers conducted studies and issued a Report (House Document 602, October 2, 1962) identifying three causes of Orange County beach erosion: (1) the jetties at the entrance to Anaheim Bay; (2) flood-control structures constructed on the Los Angeles, San Gabriel, and Santa Ana rivers reducing sand delivery; and (3) construction of the Los Angeles/Long Beach breakwater system further altering and exacerbating the local sediment transport processes. The U.S. Army Corps of Engineers acknowledged that all three causes of beach erosion were the result of the Federal government's own actions. Accordingly, the U.S. Army Corps of Engineers recommended that the Federal Government provide 67% of the cost of initial deposition of sand, with periodic beach nourishment. Congress authorized the Report's recommendations through the 1962 River and Harbor Act, Public Law 87-874, which the President signed; and

WHEREAS, From 1964 through 1997, Beach Nourishment Stages 1 through 10 were completed. For 32 years, the U.S. Army Corps of Engineers Commander considered beach nourishment a mandatory requirement. However, in 1995, the U.S. Army Corps of Engineers began a phase-out of nourishment without regard to its past practice that nourishment was unique and necessary. Nourishment Stage 11 was completed in 2001, and Stage 12 was not completed until 2009; and

WHEREAS, In February 2019, the U.S. Army Corps issued an Environmental Assessment for Nourishment Stage 13, indicating the project would begin in the winter of 2019, and that Stage 14 would occur in 2023. The Environmental Assessment acknowledged that Stages 13 and 14 were required pursuant to the 1962 Act of Congress, Public Law 87-874, and that "Federal authority directs the Corps to nourish the beaches between the Anaheim Bay jetties and the Newport Pier;" and

WHEREAS, If nourishment is discontinued, Orange County beaches will erode, reducing the protection of shoreline facilities and recreation opportunities due to storm damage; and

WHEREAS, Despite the warning that failure to nourish local beaches would expose public and private property to storm damage but also reduce recreation opportunities the U.S. Army Corps of Engineers has failed to fund the Nourishment Stage 13 for 11 years.

NOW, THEREFORE, BE IT RESOLVED, the Board of Supervisors of Orange County does hereby resolve as follows:

1. The Board of Supervisors finds all the above Recitals true and correct.

2. The Board of Supervisors urges the U.S. Army Corps of Engineers, South Pacific Division Los Angeles District to immediately seek funding and proceed with Surfside-Sunset Beach Nourishment Project Stage 13 no later than Federal Fiscal Year 2022 (FY 2022)

3. The Board of Supervisors directs the County Clerk to forward this Resolution to LTG Scott A. Spellmon, Commanding General of the U.S. Army Corps of Engineers, GEN Paul E. Owen, Commander of the U.S. Army Corps of Engineers South Pacific Division, COL Julie Balten, Los Angeles District Commander, and the Orange County Federal Legislative Delegation.

4. PASSED AND ADOPTED by the Board of Supervisors, Orange County, California at a regular meeting thereof held on the _____ day of _____, 2021.

County Executive Office

Memorandum

RECEIVED
2021 JUL 21 PM 2:27
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

July 20, 2021

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of Orange, ou=CEO, email=frank.kim@ocgov.com, c=US
Date: 2021.07.20 17:02:10 -07'00'

Subject: Exception to Rule 21

S40G

The County Executive Office is requesting a Supplemental Agenda Staff Report for the July 27, 2021, Board Hearing.

Agency: County Executive Office and Sheriff-Coroner
Subject: Approve Revised Mutual Aid Agreement for the COVID-19 Vaccination Program
Districts: All Districts

Reason for supplemental: This agenda staff report is requested to be heard at the next available Board meeting so that the Revised Mutual Aid Agreement for the COVID-19 Vaccination Effort is finalized as soon as possible. Additionally, the County's participation in the vaccination initiative will be primarily funded by the Federal Emergency Management Agency (FEMA) through its Public Assistance (PA) program and the County would like to request reimbursement as quickly as possible, as it is time sensitive. Scheduling this item for a later Board meeting could delay reimbursement for services provided. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:

Andrew Do, Chairman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel

Agenda Item
Clerk's Use Only S40G

SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

RECEIVED
2021 JUL 21 PM 2:27
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

MEETING DATE:	7/27/21
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	All Districts
SUBMITTING AGENCY/DEPARTMENT:	County Executive Office and Sheriff Coroner
DEPARTMENT HEAD REVIEW:	*Department Head Signature*
DEPARTMENT CONTACT PERSON(S):	Lisa Bohan-Johnston (714) 834-3530 Michelle Anderson (714) 628-7158

SUBJECT: Approve Revised Mutual Aid Agreement for the COVID-19 Vaccination Program

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
Digitally signed by Frank Kim DN: cn=Frank Kim, o=County of Orange, ou=CEO, email=frank.kim@ocgov.com, c=US Date: 2021.07.21 09:15:59 -07'00'	Approved as to form	Discussion
CEO Signature	*Action*	3 Votes Board Majority
	County Counsel Signature	

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: N/A **# of Positions:** **Sole Source:** No

Current Fiscal Year Revenue: See Financial Impact Section

Funding Source: Other: 100% (CalOES & FEMA) **County Audit in last 3 years:** No

Prior Board Action: 03/09/2021 #S27G, 03/24/2020 #4, 03/02/2020 #1

RECOMMENDED ACTION(S)

1. Approve and authorize the Director of Emergency Management Division to execute the revised Mutual Aid Agreement for the COVID-19 Vaccination Effort with mutual aid partner agencies, pertaining to mutual aid assistance provided under the Orange County Operational Area Agreement.

2. Direct the Auditor-Controller to make payments and reimburse mutual aid partner agencies for costs incurred for the Novel Coronavirus COVID-19 Vaccination Effort pertaining to mutual aid assistance provided under the Mutual Aid Agreement, from FEMA Reimbursements, Budget Control 086, upon approval and receipt of federal reimbursement funding from the Federal Emergency Management Agency or California Office of Emergency Services.

SUMMARY:

Approval of the revised Mutual Aid Agreement will provide mutual aid assistance and allow the County of Orange to reimburse mutual aid partner agencies for costs incurred for the Novel Coronavirus COVID-19

Vaccination Effort, upon approval and receipt of federal reimbursement funding from the Federal Emergency Management Agency or California Office of Emergency Services.

BACKGROUND INFORMATION:

COVID-19 is a worldwide pandemic resulting in significant health and economic impacts across the globe. On February 25, 2020, the United States Centers for Disease Control and Prevention (CDC) announced that community spread of the novel coronavirus (COVID-19) was likely. On February 26, 2020, the Orange County Health Officer declared a Health Emergency. On February 26, 2020, the Chair of the Emergency Management Council issued a Proclamation of Local Emergency pursuant to the requirements of the California Emergency Services Act, which was ratified by the Board of Supervisors (Board) on March 2, 2020.

On March 4, 2020, the Governor of the State of California proclaimed a state of emergency in response to the COVID-19 pandemic pursuant to the California Emergency Services Act.

On March 13, 2020, the President of the United States issued a Major Disaster Declaration for California (FEMA-4482-DR-CA) in response to the COVID-19 pandemic pursuant to Section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (Stafford Act). This action made the State of California, local and Indian tribal governments, and certain private non-profit organizations eligible to apply for reimbursement from the Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program.

On March 24, 2020, the Board approved the Orange County Operational Area Agreement (OAA) of the County of Orange and Political Subdivisions with a reorganized and applicable agreement that addresses agency relationships, jurisdictional responsibilities and legislated mandates before, during and after major emergencies.

On December 31, 2020, the County of Orange (County) launched Operation Independence and has implemented a vaccination effort (COVID-19 Vaccination Effort) intended to vaccinate all eligible citizens free-of-charge to curtail the impacts of COVID-19 on residents throughout the County. Implementation of the COVID-19 Vaccination Effort is a labor intensive effort requiring significant staffingon a day-to-day basis and the County is seeking mutual aid partner agencies who are interested in providingstaff to assist in the COVID-19 Vaccination Effort and who are members of the OAA for the coordinationof Mutual Aid Emergency Response as provided for under the California Emergency Services Act.

To coordinate this intensive effort, the County formed the Operation Independence Incident Management Team (IMT) to coordinate the planning and operation of COVID-19 regional vaccination sites and mobile clinics, including all staffing scheduling and obtaining services and supplies, equipment and facilities.

On March 9, 2021, the Board approved an initial version of the Mutual Aid Agreement (Agreement) required to document the mutual aid relationship and processes for reimbursing cities for services requested by the County to support the COVID-19 Vaccination Effort. The California Office of Emergency Services (CalOES) subsequently provided feedback on the Agreement requesting clarification language, which is tracked in the redline version of the Agreement. Revisions include re-ordering the recitals, removing references to third parties (e.g., FEMA and CalOES) and clarifying language within the billing and reimbursement section.

The Sheriff-Coroner Department and the County Executive Office request Board approval for the Director of the Emergency Management Division to execute the Agreement for the COVID-19 Vaccination Effort.

FINANCIAL IMPACT:

The County will submit reimbursement claims on behalf of participating partner agencies to recover reimbursement of all eligible costs for the COVID-19 Vaccination Effort. The County will reimburse Mutual Aid Partner agencies based on what has been approved for reimbursement by FEMA and CalOES and upon receipt of federal reimbursement funding. If any appropriations and revenue adjustments are required, they will be included in the FY 2020-21 Year-End and FY 2021-22 Budget Reports.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Revised Mutual Aid Agreement for the COVID-19 Vaccination Program
Attachment B - Redline version of the Mutual Aid Agreement for the COVID-19 Vaccination Program
Attachment C - Stafford Act Section 501

MUTUAL AID AGREEMENT
for the
COVID-19 Vaccination Effort

This Mutual Aid Agreement ("AGREEMENT") between the County of Orange, a political subdivision of the State of California, ("COUNTY" or "LEAD AGENCY") and _____ ("MUTUAL AID PARTNER" or "PROVIDING JURISDICTION") pertaining to mutual aid assistance provided under the Orange County Operational Area Agreement ("OAA") is made and entered into as of _____, 2021. COUNTY and MUTUAL AID PARTNER are individually referred to as "PARTY" and collectively referred to as "PARTIES."

NOTE: Use of such an agreement does not guarantee state or federal reimbursement.

WHEREAS, this event and associated conditions will collectively be referred to as the Novel Coronavirus COVID-19 Vaccination Effort ("COVID-19 Vaccination Effort"); and

WHEREAS, COVID-19 is a world-wide pandemic resulting in significant health and economic impacts across the globe;

WHEREAS, on February 26, 2020, the Orange County Health Officer declared a Health Emergency;

WHEREAS, on February 26, 2020, the Chair of the Emergency Management Council issued a Proclamation of Local Emergency pursuant to the requirements of the California Emergency Services Act, which was ratified by the Board of Supervisors on March 2, 2020;

WHEREAS, on March 4, 2020, the Governor of the State of California proclaimed a state of emergency in response to the COVID-19 pandemic pursuant to the California Emergency Services Act;

WHEREAS, on March 13, 2020, the President of the United States issued a Major Disaster Declaration for California (FEMA-4482-DR-CA) in response to the COVID-19 pandemic pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"). This action made the State of California, local and Indian tribal governments and certain private non-profit (PNP) organizations eligible to apply for reimbursement from the Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program[1].

WHEREAS, the COUNTY has implemented a vaccination effort ("COVID-19 Vaccination Effort") intended to vaccinate all eligible community members free-of-charge to curtail the impacts of COVID-19 on residents throughout the County;

[1] See https://www.fema.gov/assistance/public/program-overview for more information.

WHEREAS, residents in County unincorporated areas and those residing within the boundaries of incorporated cities within the County of Orange are equally impacted by COVID-19 and will equally benefit from receipt of COVID-19 vaccinations;

WHEREAS, implementation of the COVID-19 Vaccination Effort is an intensive effort requiring significant resources and coordination across jurisdictions on a day-to-day basis;

WHEREAS, the County formed the Operation Independence Incident Management Team (IMT) to coordinate the planning and operation of COVID-19 regional vaccination sites and mobile clinics, including all staffing scheduling and obtaining services and supplies, equipment and facilities.

WHEREAS, COUNTY is seeking resources including but not limited to staffing, services and supplies, equipment and facilities to ensure the safe, expeditious and effective operation of COVID-19 Vaccination Effort vaccination sites;

WHEREAS, MUTUAL AID PARTNER is interested in providing staff to assist in the COVID-19 Vaccination Effort;

WHEREAS, COUNTY and MUTUAL AID PARTNER wish to clarify the terms by which Mutual Aid assistance and reimbursement will be provided by the Parties in implementing the COVID-19 Vaccination Effort;

WHEREAS, COUNTY and MUTUAL AID PARTNER are members of the Orange County Operational Area (OA) for the coordination of Mutual Aid Emergency Response as provided for under the California Emergency Services Act. The Orange County Operational Area Agreement describes the cooperative and mutual handling of duties and responsibilities within Orange County related to disaster preparedness, response and recovery, including the coordination of the emergency functions of the Operational Area with all other public agencies, corporations, organizations, and affected private persons within the Operational Area;

NOW, THEREFORE, COUNTY and MUTUAL AID PARTNER agree to the following terms to guide their dealings as they pertain to participation in the COVID-19 Vaccination Effort.

A. Limitation of Liability

1. Indemnification

i. By MUTUAL AID PARTNER: MUTUAL AID PARTNER agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by MUTUAL AID PARTNER pursuant to this Agreement. If judgment is entered against MUTUAL AID PARTNER and COUNTY by a court

of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY Indemnitees, MUTUAL AID PARTNER and COUNTY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

ii. By COUNTY: COUNTY agrees to indemnify MUTUAL AID PARTNER, and hold MUTUAL AID PARTNER, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("MUTUAL AID PARTNER Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by COUNTY pursuant to this Agreement. If judgment is entered against COUNTY and MUTUAL AID PARTNER by a court of competent jurisdiction because of the concurrent active negligence of MUTUAL AID PARTNER or MUTUAL AID PARTNER Indemnitees, COUNTY and MUTUAL AID PARTNER agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

2. Waiver of Claims

i. Each PARTY hereto agrees to waive all claims against all other PARTIES hereto for any loss, damage, personal injury or death occurring in consequence of the performance of this Mutual Aid Agreement; provided, however, that such claim is not a result of gross negligence or willful misconduct by a PARTY hereto or its personnel.

ii. Each PARTY to this Agreement waives all claims against all other PARTIES to this Agreement for compensation for any loss, damage, personal injury, or death occurring to personnel and/or equipment as a consequence of the performance of this agreement.

3. Governmental Immunity:

To the fullest extent authorized by law, all activities performed under this agreement are deemed to be governmental functions. Neither COUNTY or MUTUAL AID PARTNER, nor their employees, except in cases of willful misconduct, gross negligence, or bad faith shall be liable for the death of or injury to persons, or for damage to property when complying or attempting to comply with this Agreement.

4. Insurance:

i. Each PARTY shall be responsible for providing insurance for its own employees and representatives.

ii. Claims for injuries incurred while participating in the COVID-19 Vaccination Effort will be submitted under the Workers Compensation policy of the injured PARTY's employer. (i.e.,

COUNTY employees/volunteers will submit under the COUNTY's policy and MUTUAL AID PARTNER employees/volunteers will submit under the MUTUAL AID PARTNER's policy.)

B. Billing and Reimbursement

1. Reimbursement Rules

Regardless of the source of funds by which Vaccination Effort Reimbursement Requests are reimbursed, the PARTIES agree for the sake of consistency and accuracy:

i. To abide by the principles set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq.; Title 44 of the Code of Federal Regulations (C.F.R.), Part 206; and 2 C.F.R., Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

ii. To be guided by the concepts outlined within FEMA Public Assistance Program and Policy Guide (Exhibit 2).

iii. To be further guided by COVID-19-specific response and recovery guidance issued by federal and state agencies related to vaccination efforts.

2. MUTUAL AID PARTNER Responsibilities:

i. Submit Vaccination Effort Reimbursement Requests to COUNTY at a minimum of once every 30 days according to schedule provided by COUNTY.

ii. Submit all Vaccination Effort Reimbursement Requests in the format attached to this Agreement (Exhibit 1) or as otherwise may be required by the COUNTY for services rendered by MUTUAL AID PARTNER representatives. Failure to submit timely Vaccination Effort Reimbursement Requests in the recommended format may result in a denial of reimbursement and require resubmittal of Request.

iii. Ensure that, for each Vaccination Effort Reimbursement Request submitted, all COVID-19 Vaccination Effort direct labor expenditures (includes labor burden and excludes overhead) are documented and certified by the MUTUAL AID PARTNER to be in compliance with COUNTY requirements.

iv. Ensure that for each Vaccination Effort Reimbursement Request submitted, all personnel resources are reconciled with COUNTY vaccination site personnel records.

v. Exclude from each Vaccination Effort Reimbursement Request incidental expenditures such as mileage, meals, lodging, etc.

vi. Provide any additional documentation requested by COUNTY in support of the MUTUAL AID PARTNER's Vaccination Effort Reimbursement Request.

vii. Maintain records for audit, as described within the FEMA Public Assistance Program and Policy Guide (Exhibit 2). MUTUAL AID PARTNER shall make records available for inspection upon request of the COUNTY.

viii. Remedy any audit finding related to Vaccination Effort Reimbursement Requests, including any audit finding identified under the Improper Payments Elimination and Recovery Improvement Act (IPERIA).

ix. MUTUAL AID PARTNER agrees to provide sufficient documentation, as defined by the COUNTY, to ensure adequate validation of costs for reimbursement. As necessary during this public health crisis, MUTUAL AID PARTNER will assist with the COVID-19 Vaccination Effort and ensure that cost documentation is submitted to the COUNTY for review and verification to ensure County has complete cost documentation to support County reimbursement requests.

3. COUNTY Responsibilities

i. Conduct an initial review for completeness of MUTUAL AID PARTNER Vaccination Effort Reimbursement Request and supporting documentation for consistency with Reimbursement Rules (Section B.1 herein).

ii. Submit MUTUAL AID PARTNER Vaccination Effort Reimbursement Request to third party reimbursement funding grantors within 30 days of receipt of complete request, including backup documentation, from MUTUAL AID PARTNER.

iii. Monitor the status of the MUTUAL AID PARTNER Vaccination Effort Reimbursement Request and inform the MUTUAL AID PARTNER of progress.

iv. Work with MUTUAL AID PARTNER to resolve any issues with Vaccination Effort Reimbursement Requests.

v. Reimburse MUTUAL AID PARTNER when the COUNTY has determined that sufficient documentation has been received and reimbursement funds are available.

vi. In response to auditing or monitoring requests made by third party reimbursement funding grantors, COUNTY will work with MUTUAL AID PARTNER to ensure adequate documentation is gathered to effectively respond to requests for information.

4. Modifications

This agreement is subject to program modifications that may be made to Reimbursement Rules by state and federal legislative and regulatory authorities.

C. Disputes

Any controversy or claim between the PARTIES arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

D. Termination

Any PARTY may withdraw from this Agreement upon 30 days written notice.

MUTUAL AID PARTNER:

By _____
(Signature)
Name:
Title:
Agency:
Date:

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA
By _____ Deputy 7/19/2021

COUNTY OF ORANGE

By _____
(Signature)
Name:
Title:
Date:

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Check the box if included in PW package
Click on title to link to sheet

- ☐ Eligible Expenses
- ☐ Cost Summary Roll-Up
- ☐ Fringe Benefits
- ☐ Labor - At POD Site or IMT
- ☐ Labor - Outside POD Site or IMT
- ☐ Invoice

SUPPORTING DOCUMENTATION

- ☐ Time Sheets
- ☐ Payroll Registers
- ☐ ICS 214 - ALL Employee Activity Logs
- ☐ ICS 204 - Outside POD site or IMT
- ☐ Department/Agency Pay Policy**
- ☐ Post Event Agreement**

** Only necessary to provide once per jurisdiction

FILL OUT FIRST

DISASTER DETAILS	Disaster Number (XXXX-DR-STATE):	4482-DR-CA
	Applicant Name:	County of Orange
	Category:	B
Agency Information	Prepared By:	Enter Name Person Completing
	Preparer Title:	Title of Person Completing
	Department:	Enter Department
	Jurisdiction:	City/Jurisdiction
	Mailing Address:	Street Address
		City, State, Zip Code
	Office Phone | Fax Number:	Office Phone | Fax Number
	Contact Email:	Enter Email of Primary Contact
	Certified By & Title:	Enter Name, Title of Certifying Official
	Resource Type:	Emergency Management Mutual Aid
	If Other Specify:	

ATTENTION:

This is a protected form, with many cells locked in order to prevent modifications to the general template. Please use caution if adding or deleting rows to ensure formulas are maintained and copied correctly.

INSTRUCTIONS:

Complete all yellow fields. Data will autopopulate other sheets in Excel Workbook.
- Yellow fields represent data that must be entered.
- Blue fields represent fields that are calculations or are autofilled
- Green fields represent totals that are transferred to the Cost Summary Roll-Up

If pages do not print correctly, select "View" and "Page Break Preview" and adjust manually.

Eligibility For Reimbursement

In order to be eligible for reimbursement, the resource must have been requested and not self-deployed and must have a pre-executed MOU or Post-Event Agreement. All supporting documentation must be provided. The expenses incurred may vary depending on the Type of

Examples of Eligible Expenses:

Only labor and associated fringe benefits are being accepted for processing by the County at this time.

Examples of Ineligible Expenses:

- Equipment
- Portal to Portal Compensation
- Combination of Mileage and Fuel for the same vehicle

All County-requested labor costs are eligible.

Non-labor resources provided by the county and requested through WebEOC may not be eligible for reimbursement under public assistance unless specifically approved by the County on a case-by-case basis.

FEDERAL EMERGENCY MANAGEMENT AGENCY

COST SUMMARY ROLL-UP

APPLICANT	JURISDICTION	CATEGORY	DISASTER
County of Orange	**City/Jurisdiction**	**B**	**4482-DR-CA**

CATEGORY	CLAIM COST	COMMENTS	ELIGIBLE COSTS
LABOR *REGULAR TIME* (At-POD)	$ -	Resources requested by the County and deployed at the POD site and IMT	$ -
LABOR *OVERTIME* (At-POD)	$ -	Resources requested by the County and deployed at the POD site and IMT	$ -
LABOR *REGULAR TIME* (Outside-POD)	$ -	Resources requested by the County and deployed outside the POD site and IMT	$ -
LABOR *OVERTIME* (Outside-POD)	$ -	Resources requested by the County and deployed outside the POD site and IMT	$ -
OTHER COSTS (If pre-approved)	$ -		$ -
TOTAL	$ -		$ -

I certify that the above information was transcribed from timesheets, payroll records, equipment log, invoices, stock records or other documents which are available for audit. This claim is for cost incurred within the approved Grant Performance Period.
By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the term and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Section 3729-3730 and 3801-3812).
The above resources were requested by the County of Orange for Vaccination Efforts and provided or deployed by Mutual Aid Partner certifying this report.

CERTIFICATION AND COMMENTS:

Certified by:	Date:
Enter Name, Title of Certifying Official	

Applicant's records have been reviewed and found correct with the exceptions and/or comments noted below:

Reviewed by (IEM):	Date:
Enter Name, Title of IEM Compliance Reviewer	

Reviewed by (Orange County):	Date:
Enter Name, Title of OC Compliance Reviewer	

FEDERAL EMERGENCY MANAGEMENT AGENCY

APPLICANT'S BENEFITS CALCULATION WORKSHEET

APPLICANT	JURISDICTION	CATEGORY	DISASTER
County of Orange	**City/Jurisdiction**	**B**	**4482-DR-CA**

ENTER TOTAL ANNUAL PAYROLL

		REGULAR TIME %	OVERTIME %
Holidays			
Vacation Leave			
Sick Leave			
*** Social Security**			
*** Medicare**			
*** Unemployment**			
*** Worker's Comp**			
**** Retirement**			
Health Benefits			
Life Insurance Benefits			
Other (Describe here) _____			
	Total (in % of annual salary)		

If the benefit is applied to the overtime fringe rate, select the proper box

(FIGURES IN BLUE AUTOMATICALLY "GO" TO THE FORCE ACCOUNT LABOR SHEETS)

COMMENTS:

I CERTIFY THAT THE INFORMATION ABOVE WAS TRANSCRIBED FROM PAYROLL RECORDS OR OTHER DOCUMENTS WHICH ARE AVAILABLE FOR AUDIT.

CERTIFIED: Enter Name, Title of Certifying Official _____

DATE: _____

*** Only categories for overtime fringe benefits.**
**** Only an overtime fringe benefit when supported by employee contract**

FEDERAL EMERGENCY MANAGEMENT AGENCY

LABOR RECORD - At POD Site or IMT

APPLICANT	JURISDICTION	CATEGORY	DISASTER #	After review of the pay policy, are EXEMPT employees eligible for OT?	No
County of Orange	City/Jurisdiction	B	4482-DR-CA	Enter OT Rate	1.5

		TOTAL REG HOURS	REG TIME TOTAL	$ -
		TOTAL OT HOURS	OT TOTAL	$ -
		TOTAL HOURS	TOTAL COST	$ -

EMPLOYEE NAME / TITLE (Last Name, First Name)		STATUS	REG / OT	DATES & HOURS WORKED																															RATES / COSTS				
				1/1	1/2	1/3	1/4	1/5	1/6	1/7	1/8	1/9	1/10	1/11	1/12	1/13	1/14	1/15	1/16	1/17	1/18	1/19	1/20	1/21	1/22	1/23	1/24	1/25	1/26	1/27	1/28	1/29	1/30	1/31	TOTAL HRS	HOURLY RATE	BENEFIT RATE	TOTAL HOURLY	TOTAL COST
Name			REG																																			
Title			OT																															$ -		$ -	$ -
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FEDERAL EMERGENCY MANAGEMENT AGENCY

LABOR RECORD - Outside POD Site or IMT

APPLICANT	JURISDICTION	CATEGORY	DISASTER #	After review of the pay policy, are EXEMPT employees eligible for OT?	No
County of Orange	City/Jurisdiction	B	4482-DR-CA	Enter OT Rate	1.5

						TOTAL REG HOURS	REG TIME TOTAL	$ -
						TOTAL OT HOURS	OT TOTAL	$ -
						TOTAL HOURS	TOTAL COST	$ -

EMPLOYEE NAME / TITLE (Last Name, First Name)		STATUS	REG / OT	DATES & HOURS WORKED																														RATES / COSTS				
				1/1	1/2	1/3	1/4	1/5	1/6	1/7	1/8	1/9	1/10	1/11	1/12	1/13	1/14	1/15	1/16	1/17	1/18	1/19	1/20	1/21	1/22	1/23	1/24	1/25	1/26	1/27	1/28	1/29	1/30	1/31	TOTAL HRS	HOURLY RATE	BENEFIT RATE	TOTAL HOURLY	TOTAL COST
Name			REG																															$ -		$ -	$ -
Title			OT																															$ -		$ -	$ -
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Name			REG																															$ -		$ -	$ -
Title			OT																															$ -		$ -	$ -

Add Logo (optional)

INVOICE

City/Jurisdiction
Enter Department
Street Address
City, State, Zip Code
Office Phone | Fax Number

CLAIM NO.
INVOICE NO.
DATE 7/13/2021
RESOURCE TYPE Emergency Management Mutual Aid

Enter Email of Primary Contact

TO

County of Orange
IMT MAP - Claims
601 N. Ross St., 4th Floor, Room 426
Santa Ana, CA 92701
714-834-4150

Disaster: COVID-19

PAYMENT TERMS

Vaccination PODS

Due on receipt

DESCRIPTION	QUANTITY	TOTAL
Labor - Straight Time - At POD Site or IMT	0.00	**$0.00**
Labor - Overtime - At POD Site or IMT	0.00	**$0.00**
Labor - Straight Time - Outside POD Site or IMT	0.00	**$0.00**
Labor - Overtime - Outside POD Site or IMT	0.00	**$0.00**
OTHER COSTS (If pre-approved)		**$0.00**
	0.00	**$0.00**

Make all checks payable to City/Jurisdiction.

THANK YOU FOR YOUR BUSINESS!

Public Assistance Program and Policy Guide

Version 4, Effective June 1, 2020

(FP 104-009-2)

FEMA

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FOREWORD

On behalf of the Federal Emergency Management Agency (FEMA), I am pleased to issue this Fourth Edition (Version 4) of the *Public Assistance Program and Policy Guide* (PAPPG). FEMA has archived previous editions at www.fema.gov/media-library/assets/documents/111781. FEMA applies this Version 4 to incidents declared on or after June 1, 2020. This version supersedes Version 3.1.

As part of this version of the PAPPG, FEMA has incorporated the *Public Assistance Alternative Procedures for Permanent Work Pilot Policy* (FP 104-009-7). This establishes Alternative Procedures as the first option considered for all large permanent work projects in order to ensure the ability of Applicants to drive their own recovery. It standardizes a single process for the development and consideration of fixed cost estimates for all permanent work projects. Applicants will be able to agree to a fixed cost estimate or choose to pursue funding under standard, actual cost procedures. This approach maximizes Applicant awareness of the opportunities and benefits provided by the Alternative Procedures, which include, but are not limited to:

- Flexibility in meeting post-disaster recovery needs, as opposed to being limited to rebuilding back to what existed prior to the disaster;
- Ability to share funds across all Alternative Procedures Permanent Work Projects;
- Ability to retain and use excess funds to reduce risk and improve future disaster operations (subject to timely closeout); and
- Eligibility for cost-effective hazard mitigation on replacement projects.

Appendix M: *Alternative Procedures for Permanent Work Pilot*, provides additional information along with a summary of benefits in comparison to the standard Public Assistance (PA) procedures.

Additionally, this PAPPG Version 4 incorporates the following:

List of Changes and Clarifications Grouped by General Topic

Administrative
Reorganized and simplified language throughout the PAPPG
Incorporated the **Program Delivery Process** throughout the PAPPG
Updated References and Resources list
Updated Appendix A: *Environmental and Historic Preservation Compliance*
Added language on **outcome-driven recovery** (Chapter 2. *Operational Coordination*)
Incorporated key **Grants Management** language and requirements such as **work completion definition** and deadline requirements throughout the PAPPG
Moved documentation checklists to relevant sections and **specified required documents** throughout the PAPPG
Defined **policy on logical grouping** of damage (Chapter 5:II. *Grouping Impacts into Projects*)
Incorporated **Documentation Retention** Requirement (Chapter 12:IV. *Documentation Retention Requirements*)
Incorporated **Appeal policy** (Chapter 3:V.C. *Appeal Rights and Requirements*)

Administrative
Incorporated **Determination Memo** and **Administrative Record** guidance (Chapter 3:V.B. *Notification of Ineligibility Determination*)
Added **Closeout** policy and **documentation requirements** (Chapter 12. *Final Reconciliation and Closeout*)
Added standard **Request for Information deadlines** (Chapter 3:V. *Eligibility Determinations*)
Added definition for **site** (Chapter 5: *Damage and Impact Information*)
Added FEMA **validation of** Applicant-submitted **damage** information and documentation (Chapter 5:III.B. *Site Inspections*)
Added requirement for all **documentation** to be submitted **within 90 days** of work completion **regardless of obligation** status (Chapter 9:II.C. *Costs for Projects with All Work Completed*)

Applicant Eligibility
Added **animal control services, center-based childcare, and food banks** to eligible private nonprofit (PNP) list (Chapter 3:VI.D.2. *Private Nonprofit Essential Social Services*)
Proration of emergency work on PNP **mixed-use facilities** (Chapter 4:II.B.1. *Mixed-Use Facility*)
Clarified that **PNP** facilities that provide **flood control** are **ineligible** (Chapter 3:VI.D.3. *Private Nonprofit Ineligible Services*)
Clarified requirements for **PNPs exempt from 501c** requirement (Chapter 3:VI.D. *Private Nonprofit Organizations*)
Clarified **Community Development District requirement to serve the public** (Chapter 3:VI.D. *Private Nonprofit Organizations*)
Moved **public broadcasting** to PNP **critical service** table based on Stafford Act (Chapter 3:VI.D.1. *Private Nonprofit Critical Services*)

Emergency Work Eligibility
Clarified **demolition versus debris** (Chapter 7:I.G. Debris Removal from Private Property)
Added reference to Operation **Blue Roof** (Chapter 7:II.X.1. *Operation Blue Roof*)
Clarified that FEMA may provide exceptions to **demolish commercial structures** in limited, extraordinary circumstances (Chapter 7:II.U.2. *Commercially Owned Structures*)
Clarified and aligned **standby time** and **pre-positioning** of resources (Chapters 6:II.B.7. *Standby Time* and 7:II.E. *Pre-positioning Resources*)
Simplified the **opt-in** procedure for **debris removal Alternative Procedures** (Chapter 7:I.A. *Alternative Procedures for Debris Removal*)
Removed "temporary" from emergency repair language (Chapter 7:II.X. *Emergency Repair or Stabilization*)
Clarified **debris clearance vs. debris removal** (Chapter 7:II.J. *Emergency Access*)
Reduced list of **services eligible for temporary relocation** and added examples of eligible and ineligible support services (Chapter 7:II.V. *Temporary Relocation of Essential Services*)
Clarified that **Mosquito Abatement** may be eligible if any one of the bullet scenarios exists (Appendix G: *Mosquito Abatement*)
Eliminated requirement to make at least 10 percent of **sheltering capacity** available in Host-State sheltering (Chapter 7:II.O.4. *Host-State or Host-Tribe Evacuation and Sheltering*)
Refined **beach** eligibility language (Chapter 7:II.X.4. *Emergency Dunes or Berms on Beaches*)
Clarified language on **essential employees** being called-back from leave (Chapter 6:II.B.4. *Essential Employees Called Back from Furlough*)

Emergency Work Eligibility
Clarified that the **return of evacuees** is eligible (Chapter 7:II.O.1. *Evacuation*)
Clarified language regarding **damage caused during Emergency Work** (Chapter 7:III. *Damage Caused During Performance of Emergency Work*)

Permanent Work Eligibility
Eliminated **Alternate Project** reduction (Chapter 8:VIII.A. *Capped Project Funding*)
Clarified that replacement of **moldy** construction materials is only eligible as Permanent Work (Appendix I: *Mold Remediation*)
Clarified cost-effective **mitigation for low slope roofs** (Appendix J: *Cost-Effective Public Assistance Hazard Mitigation Measures*)
Refined **beach** eligibility language (Chapter 8:IX.E.1. *Beaches*)
Clarified eligibility of **Americans with Disability Act** requirements (Chapter 8:III.G. *Accessibility for Individuals with Disabilities*)
Refined hazard **mitigation policy** language (Chapter 8:IV.A. *Public Assistance Hazard Mitigation*)
Defined which **Flood Control Works** are under authority of the Natural Resources Conservation Service (Chapter 8:IX.B.2. *Flood Control Works*)

Cost Eligibility
Added language on **cost share matching** with Other Federal Agency funds (Chapter 1:IV.E. *Federal Cost Share*)
Clarified PNP cost ineligibility when a **PNP declines or misses the deadline** to apply for a disaster loan from the Small Business Administration (Chapter 4:II.B.2. *Small Business Administration Loan Requirement*)
Clarified Small Business Administration loan requirement for PNP **mixed-use facilities** (Chapter 4:II.B.2. *Small Business Administration Loan Requirement*)
Incorporated additional language on **procurement and contracting** (Chapter 6:VIII. *Procurement and Contracting Requirements*)
Added language on what costs are covered by **increased cost shares** (Chapter 6:XIII. *Increased Federal Cost Share for a Limited Timeframe*)
Explained difference between **project management** and **grant management** costs (Chapter 6:XV. *Project Management and Design Services* and XVI. *Grant Management and Administration*)
Clarified eligibility of costs related to **pursuing insurance** proceeds (Chapter 6:XVIII.A. *Insurance Proceeds*)
Added language on eligibility of **interest on loans** (Chapter 6.XX. *Interest on Loans*)
Incorporated **increased operating cost clarifications**, including ineligibility of costs related to transportation of students to alternate schools or temporary facilities, staff being held-over to cover shifts, and new landfills (Chapter 7:II.F. *Expenses Related to Operating a Facility or Providing a Service*)
Clarified that the **minimum threshold** does not apply to Donated Resources or Management Costs (Chapter 9:II.A. *Project Thresholds*)
Allowing **Small Project completed work** to be **estimated and certified** (Chapter 9:II.C. *Costs for Projects with All Work Completed*)

Cost Eligibility
Added language conveying that FEMA **does not re-evaluate reasonable costs on Alternative Procedure Permanent Work Pilot projects** (Chapter 9:II.E.6. *Fixed-Cost Offer for Alternative Procedures Projects*)
Eliminated allowance for **insurance** adjustments on **individual small projects** (Chapter 12:I.A. *Project Reconciliation and Closeout, Small Projects*)

Policy and Guidance Documents Incorporated and Superseded
FEMA Recovery Policy, *Public Assistance Donated Resources*
FEMA Recovery Policy FP 104-09-12, *Public Assistance Alternative Procedures Pilot Program for Debris Removal*
FEMA Recovery Policy FP 104-009-7, *Public Assistance Alternative Procedures Pilot Program - Permanent Work Standard Operating Procedures*
Public Assistance Alternative Procedures for Permanent Work Pilot (Version 4)
FEMA Fact Sheet, *Public Assistance: Procurement Conducted Under Exigent or Emergency Circumstances*
FEMA Fact Sheet, *Public Assistance: Purchasing Goods or Services through Cooperative Purchasing Programs*
FEMA Fact Sheet, *Public Assistance: Private Property Debris Removal*
FEMA Fact Sheet, *Public Assistance: Contracting Requirements Checklist*
FEMA Job Aid, *Public Assistance: Reasonable Cost Evaluation*
FEMA's *Public Assistance Program Interim Guidance on 2 C.F.R. Part 200*
March 15, 2019, memo: FEMA's *Approved Cost Estimating Methodology*
July 9, 2018, memo: *Policy Clarification for Public Assistance Hydrologic and Hydraulic Study Requirements for Drainage Structures and Culverts*
March 15, 2019, memo: *FEMA Public Assistance Repair Versus Replacement Policy Clarification*
April 11, 2018, memo: *FEMA Public Assistance Eligibility of Private Nonprofit Elementary and Secondary Schools*
Public Assistance Program Field Operations Pocket Guide
Public Assistance Program Management and Grant Closeout Standard Operating Procedure (SOP 9570.14), December 2013
FEMA Instructional Guidance, Public Assistance Expedited Projects

Guidance Documents Summarized and Referenced
FEMA Fact Sheet *Public Assistance Appeals and Arbitration Under the Disaster Recovery Reform Act*

Guidance Documents Summarized and Referenced
State Led Public Assistance Guide
Damage Assessment Operations Manual
FEMA Recovery Policy FP 104-11-2, *Public Assistance Management Costs (Interim)*
FEMA Recovery Interim Policy FP 104-009-11, *Consensus-Based Codes, Specifications and Standards for Public Assistance* (Chapter 8:III.B, *FEMA Consensus-Based Codes, Specifications and Standards*)

FEMA makes updates to the PAPPG at www.fema.gov/public-assistance-policy-and-guidance on an annual basis when necessary and conducts a comprehensive review no less than every three years. We look forward to your feedback to help inform the next version. FEMA staff may send policy recommendations through the PA Change Control Tool at portalapps.fema.net/apps/ORR/NewPA/Pages/SubmitRequest-CCT-P3.aspx. Recipients and Applicants may request changes via email at FEMA-Recovery-PA-Grants-Mailbox@fema.dhs.gov.

Keith Turi
Assistant Administrator
Recovery Directorate

INTRODUCTION

I. Public Assistance Program Overview

The mission of the Federal Emergency Management Agency's (FEMA's) Public Assistance (PA) Program is to provide assistance to State, local, Territorial, or Tribal, and local (SLTT) governments, and certain types of private nonprofit (PNP) organizations so that communities can quickly respond to and recover from major disasters or emergencies declared by the President. Through the PA Program, FEMA provides supplemental Federal grant assistance for debris removal, emergency protective measures, and the restoration of disaster-damaged, publicly owned facilities and specific facilities of certain PNP organizations. The PA Program also encourages protection of these damaged facilities from future incidents by providing assistance for hazard mitigation measures. FEMA provides this assistance based on authority in statutes, executive orders (EOs), regulations, and policies.

II. Authorities

FEMA provides assistance based on authorities defined in statutes and regulations. These authorities also specify requirements that must be met. When the PAPPG uses the words "must" or "required," it is a legal requirement. The Applicant jeopardizes its PA funding if it does not comply with these requirements.

A. Statutes

Statutes are Federal laws passed by the U.S. Congress and signed by the President. All PA Program assistance must comply with all applicable statutes. The statute that authorizes FEMA to provide assistance via the PA Program is the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq.[1] The following sections of the Stafford Act specifically authorize the assistance FEMA provides under the PA Program:

- Title I – Findings, Declarations and Definitions
- Title III – Major Disaster and Emergency Assistance Administration
  - Sec. 311. Insurance
  - Sec. 312. Duplication of Benefits
  - Sec. 324. Management Costs
- Title IV – Major Disaster Assistance Programs (applies to Major Disaster Declarations)
  - Sec. 403. Essential Assistance
  - Sec. 406. Repair, Restoration, and Replacement of Damaged Facilities
  - Sec. 407. Debris Removal
  - Sec. 428. Public Assistance Program Alternative Procedures
    - Section 428 of the Stafford Act authorizes FEMA to provide specific exceptions, or "Alternative Procedures," to PA Program regulations.[2] FEMA is currently

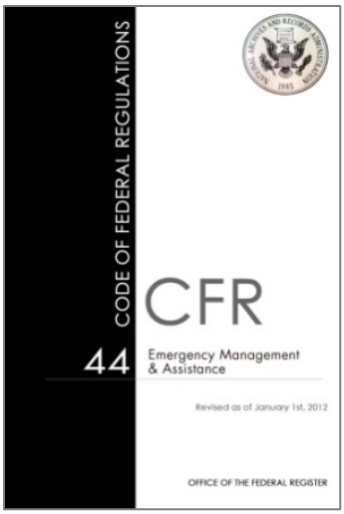
[1] www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended.
[2] The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as Amended (Stafford Act) § 428, Title 42 of the United States Code (U.S.C.) § 5189f.

piloting these Alternative Procedures as optional procedures. These procedures are available to each Applicant on a voluntary basis. The specific alternatives are presented throughout this document, where applicable.

- Title V – Emergency Assistance Programs (applies to Emergency Declarations)
  - Sec. 502. Federal Emergency Assistance
- Title VII – Miscellaneous
  - Sec. 705. Disaster Grant Closeout Procedures

B. Regulations

Regulations are Federal rules with the force and effect of law that implement a statute based on a Federal agency's interpretation of that statute.[3] FEMA and any entity receiving PA assistance must comply with all applicable Federal Regulations.[4]



FEMA publishes PA Program rules in the following parts of Title 44 of the Code of Federal Regulations (C.F.R.), Emergency Management and Assistance:[5]

- Part 206 Subpart G, Public Assistance Project Administration;
- Part 206 Subpart H, Public Assistance Eligibility; and
- Part 206 Subpart I, Public Assistance Insurance Requirements.

The Office of Management and Budget establishes regulations regarding administrative requirements, cost principles, and audit requirements in 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

III. Document Purpose and Use

FEMA issues policy to articulate the Agency's intent and direction in applying statutory and regulatory authority to achieve desired outcomes. The purpose of the *Public Assistance Program and Policy Guide* (PAPPG) is to define FEMA's PA Program and its policy and procedural requirements. Only the Assistant Administrator of Recovery at FEMA Headquarters has the authority to modify or waive PA Policy.

The PAPPG provides high-level program delivery information and describes important PA functions that occur throughout the entire program delivery lifecycle.

FEMA staff use the PAPPG to guide decision-making and ensure consistent implementation of the PA Program across the Nation. Separate FEMA policies and guidance documents that apply

[3] Stafford Act § 321, 42 U.S.C. § 5164.
[4] Title 44 of the Code of Federal Regulations (C.F.R.) § 206.200(b). The electronic version of the C.F.R. is available at www.ecfr.gov.
[5] Stafford Act § 325, 42 U.S.C. § 5165c; 44 C.F.R. § 1.4.

to the PA Program are referenced where applicable and listed in the *References and Resources* section at the end of the PAPPG.

IV. Scope

The PAPPG provides comprehensive PA policy to use when evaluating eligibility. It includes FEMA's policy statements and provides a summary of each step of the PA Program lifecycle beginning with pre-declaration activities through closure of the PA Program award for a declared incident. Figure 1 below provides an overview of the PA Program delivery process. The PAPPG references and provides weblinks to other FEMA policies and documents such as standard operating procedures and job aids that provide detailed instructions for individuals involved with implementing each of the various steps.

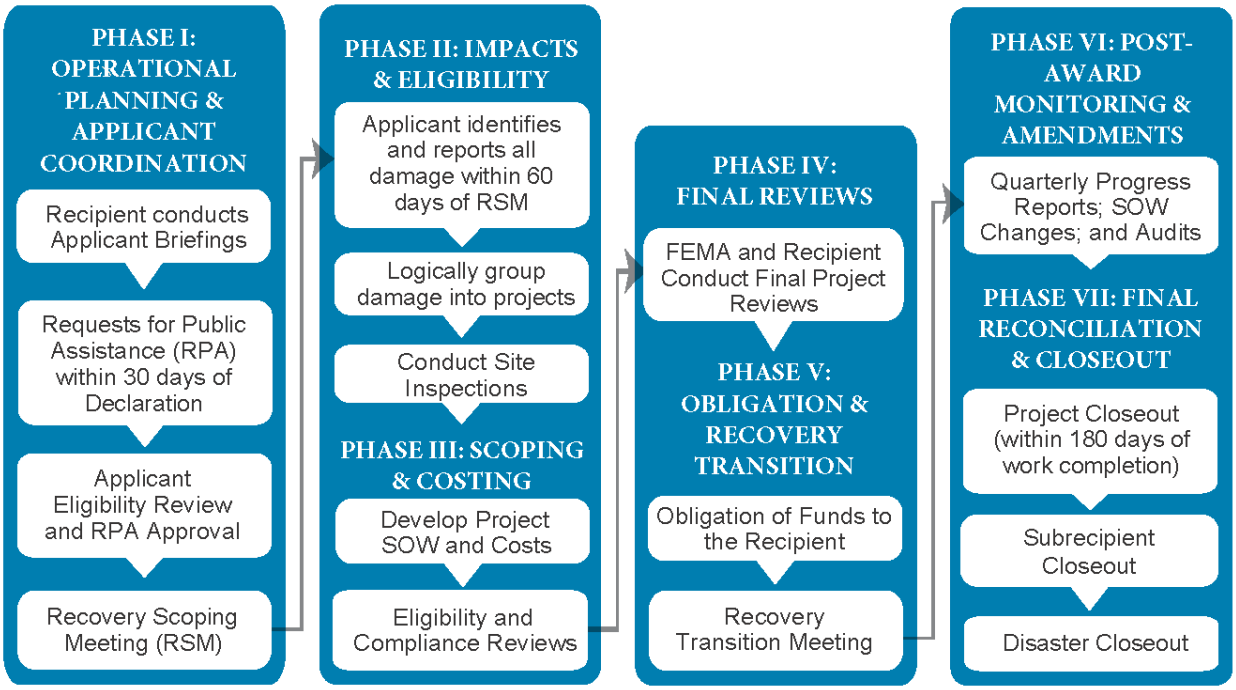


Figure 1. PA Program Delivery Process

V. Applicability

FEMA applies Version 4 of the PAPPG to incidents declared on or after June 1, 2020. Individuals who have responsibilities managing, implementing, or pertaining to the PA Program should refer to the PAPPG for PA policy and procedural requirements.

VI. Document Management and Maintenance

FEMA generally publishes proposed PA policy language for public comment prior to publishing in this document.[6] When the policy is deemed significant, FEMA publishes it in the *Federal*

[6] Stafford Act § 325, 42 U.S.C. § 5165c.

Register.[7] FEMA conducts a comprehensive review of this publication no less than every three years. FEMA staff may send policy recommendations through the PA Change Control Tool at portalapps.fema.net/apps/ORR/NewPA/Pages/SubmitRequest-CCT-P3.aspx. Recipients and Applicants may request changes via email at FEMA-PA-Grants@fema.dhs.gov.

[7] FEMA is required to publish policies for comment if they are deemed "significant" by the Office of Management and Budget, pursuant to Executive Order 12866.

CHAPTER 1: PRE-AWARD ACTIVITIES

The Stafford Act[8] authorizes the President to provide Federal assistance when the magnitude of an incident or threatened incident exceeds the affected State,[9] local[10] Territorial, and Indian Tribal[11] government capabilities to respond or recover. This chapter explains procedures and requirements for activities that occur during the pre-award phase, including the process for requesting a Presidential declaration, FEMA's evaluation criteria, the contents of the declaration, and the initial administrative requirements for a State, Territorial, or Tribal government to receive assistance.

I. Preliminary Damage Assessment

When a State, Territorial, or Tribal government determines that an incident may exceed SLTT capabilities to respond, it requests a joint Preliminary Damage Assessment (PDA) with FEMA.[12] Federal, SLTT government, and certain PNP organization officials work together to estimate and document the impact and magnitude of the incident.[13] Accurate and comprehensive PDAs are critical to enabling efficient response and recovery. FEMA's *Damage Assessment Operations Manual*[14] provides detailed information to assist staff involved with damage assessments and describes how FEMA utilizes the information when evaluating requests for Major Disaster Declarations.

II. Declaration Request

The Governor[15] or Tribal Chief Executive[16] may request a declaration from the President through FEMA. A Tribal government may elect to be a Recipient[17] or a Subrecipient[18] under a

[8] www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended.
[9] Stafford Act § 102(4), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(22), State governments include the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.
[10] Stafford Act § 102(8), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(16), local governments include counties, municipalities, cities, towns, townships, local public authorities, school districts, special districts established under State law, intrastate districts, councils of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entities, agencies or instrumentalities of a local government; State-recognized Tribes; and rural communities, unincorporated towns or villages, or other public entities, for which an application for assistance is made by a State or political subdivision of a State.
[11] Stafford Act § 102(6), 42 U.S.C. § 5122; 44 C.F.R. § 206.201(i), an Indian Tribal Government is any Indian or Alaska Native tribe, band, nation, pueblo, village, or community listed as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994. Hereinafter referred to as Tribal Government.
[12] 44 C.F.R. § 206.33(a).
[13] 44 C.F.R. § 206.33(b).
[14] www.fema.gov/media-library/assets/documents/109040.
[15] Stafford Act § 102(5), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(12).
[16] Stafford Act § 102(12), 42 U.S.C. § 5122.
[17] 44 C.F.R. § 206.201(e). Per 2 C.F.R. § 200.86, A Recipient is an entity that receives a Federal award directly from a Federal awarding agency to carry out an activity.
[18] Per 2 C.F.R. § 200.93, a Subrecipient is an Applicant that receives a subaward from a pass-through entity to carry out part of a Federal program.

State or Territorial declaration or request its own declaration as a Recipient.[19] The Governor, and/or the Tribal Chief Executive if the Tribal Government wishes to be its own Recipient, must submit the request no later than 30 days after the incident occurs.[20] FEMA may extend the deadline if the Governor or Tribal Chief Executive submits a written time extension request within 30 days of the incident stipulating the reason for the delay.[21] When a severe or catastrophic incident occurs, the Governor or Tribal Chief Executive may submit a declaration request prior to completion of the PDA.[22] This is referred to as an expedited declaration request. In such circumstances, assistance is generally limited to that which would address immediate needs based on rapid assessments until the PDA is completed.

Terminology: Recipients, Subrecipients, and Applicants

When an entity applies for PA funding, it is the **Applicant**. Once the Applicant receives funding, it is either the **Recipient, pass-through entity** or a **Subrecipient**. For simplicity, FEMA uses the term Applicant throughout this document when referring to the responsible entity for a project rather than making distinctions between an entity as the Applicant, Recipient, pass-through entity, or Subrecipient. FEMA uses the terms Recipient and Subrecipient when necessary to differentiate between the two entities.

III. Declaration Evaluation

FEMA uses PDA information to evaluate the need for assistance under the PA Program.

A. State and Territorial Governments

For State and Territorial governments, FEMA's evaluation is based on six primary factors:

- Estimated cost of assistance;
- Insurance coverage;
- Other Federal agency programs;
- Localized impacts;
- Hazard mitigation; and
- Recent multiple disasters.[23]

FEMA reviews the facility and cost information to ensure that the estimated costs include all appropriate insurance reductions and do not include costs related to facilities under the authority of another Federal agency. FEMA then compares the estimated eligible amounts to the established annual per capita indicators. To account for localized impacts when the statewide per

[19] A Tribal Governmental may also receive one type of assistance under a State or Territorial declaration and another type of assistance under its own declaration, provided there is no duplication of benefits. Additional information for Tribal declarations is available at www.fema.gov/tribal-declaration-and-disaster-assistance-resources.
[20] Stafford Act §§ 401 and 501, 42 U.S.C. §§ 5170 and 5191; 44 C.F.R. §§ 206.35 and 206.36. For Emergency Declarations, the Governor or Tribal Chief Executive must submit the request within 5 days after the need for assistance becomes apparent. For Major Disaster Declarations, the Governor or Tribal Chief Executive should submit the request as soon as possible after completion of the Joint PDA. Information and forms for Presidential declaration requests are available at www.fema.gov/media-library/assets/documents/28122, and for Tribal governments specifically, www.fema.gov/tribal-declarations-pilot-guidance.
[21] 44 C.F.R. §§ 206.35(a) and 206.36(a).
[22] 44 C.F.R. § 206.33(d).
[23] 44 C.F.R. § 206.48(a).

capita impact is low, FEMA evaluates whether there are extraordinary concentrations of damage resulting in significantly high per capita impacts at the local government level.

To encourage hazard mitigation, FEMA considers whether SLTT government mitigation measures taken prior to the incident likely reduced the damage impacts, especially if such mitigation averted damage that would have increased the estimated eligible cost above the per capita indicator.

Understanding that the effects of multiple disasters in a confined period of time can affect response and recovery capabilities, FEMA also evaluates the overall impacts of Federal and State, Territorial, or Tribal declarations that have occurred within the past 12 months and the extent to which the State, Territorial, or Tribal government has spent its own funds. If there were disasters prior to the 12-month period that still have substantial impacts on SLTT governments, FEMA may also consider impacts from these disasters.

B. Tribal Governments

Tribal governments requesting a declaration have different declaration factors than State and Territorial governments. PA declaration factors for tribes include:

- Estimated cost of assistance (minimum damage amount of $250,000);
- Insurance coverage;
- Other Federal agency programs;
- Hazard mitigation;
- Recent multiple disasters (previous 24 months);
- Types and amounts of damage;
- Economic impact of the damage to the community and government;
- Tribal resources available for response and recovery;
- Demographics of the impacted community;
- Impact on community infrastructure;
- Unique conditions that affect Tribal governments (e.g., remoteness, economy, cultural considerations); and
- Other relevant information.

Additional detail is provided in the Tribal Declaration Pilot Guidance.[24]

IV. Presidential Declaration

For FEMA to provide assistance, the President must declare that an emergency or major disaster exists. The declaration[25] establishes the:

- Type of incident;
- Incident period;
- Designated areas;
- Types of assistance;
- Federal cost share; and

[24] www.fema.gov/tribal-declarations-pilot-guidance.
[25] Each Presidential declaration is available at www.fema.gov/disaster.

- Federal Coordinating Officer (FCO).

A. Type of Incident

The declaration designates the type of incident (e.g., hurricane, tsunami, or earthquake). For Emergency Declarations, an incident is any instance that the President determines warrants supplemental emergency assistance to save lives and protect property and public health and safety, or to lessen or avert the threat of a catastrophe.[26] For Major Disaster Declarations, an incident is any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion.[27] Major Disaster Declarations may include a combination of incident types, such as storms and landslides.

B. Incident Period

The declaration designates the incident period. The incident period is the span of time during which the federally declared incident occurs.[28] This period varies in length, depending on the incident.

C. Designated Areas

The declaration designates which areas (e.g., county, parish, city, or Tribal government) are eligible to receive Federal assistance.[29] FEMA may add additional areas after the initial designation. However, for FEMA to consider adding an additional area, the Governor or Governor's Authorized Representative (GAR)[30] or, for Tribal declarations, the Tribal Chief Executive or Tribal Authorized Representative (TAR) must request the addition within 30 days of the declaration date or the end of the incident period, whichever is later.[31] FEMA may extend the deadline if the Governor, GAR, Tribal Chief Executive, or TAR submits a written time extension request within the 30-day deadline with justification of the inability to meet the deadline.[32]

D. Types of Assistance

The declaration designates the types of Federal assistance authorized.[33] The President may authorize assistance to individuals, households, and SLTT governments, and certain types of PNP organizations. FEMA provides assistance to individuals and households via its Individual Assistance (IA) programs. FEMA provides assistance to SLTT governments and certain types of PNP organizations via its PA Program. The type of assistance authorized may vary among designated areas. FEMA may add additional types of assistance after the declaration. However, for FEMA to consider adding additional types of assistance, the Governor or GAR or, for Tribal declarations, the Tribal Chief Executive or TAR must request the assistance within 30 days of

[26] Stafford Act § 102(1), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(9).
[27] Stafford Act § 102(2), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(17).
[28] 44 C.F.R. § 206.32(f).
[29] 44 C.F.R. §§ 206.2(a)(6) and 206.40(b).
[30] 44 C.F.R. §§ 206.2(a)(13) and 206.41(d).
[31] 44 C.F.R. § 206.40(c).
[32] 44 C.F.R. § 206.40(d).
[33] 44 C.F.R. § 206.40(a).

the declaration date or the end of the incident period, whichever is later.[34] FEMA may extend the deadline if the Governor, GAR, Tribal Chief Executive, or TAR submits a written time extension request within the 30-day deadline with justification of the inability to meet the deadline.[35] Tribal governments may receive one type of assistance under a State or Territorial declaration as a Subrecipient and another type of assistance under its own declaration as a Recipient, provided there is no duplication of benefits.

Terminology

A **project** is a logical grouping of work required as a result of the declaration. The damage description, scope of work, and costs are documented in the **project**, which is the basis for PA funding. 44 C.F.R. § 206.201(k).

FEMA Regional Administrators (RAs)[36] have the authority to issue Fire Management Assistance Grant (FMAG) declarations for wildfires that threaten such destruction that would constitute a major disaster.[37] The FMAG Program is separate and distinct from the PA Program. FMAG declaration criteria, eligibility, and other program information are available at 44 C.F.R. Part 204, Fire Management Assistance Grant Program, and in FEMA's *Fire Management Assistance Grant Program Guide* (FEMA P-954).[38]

If significant damage occurs as a result of one or more FMAG fire incidents, the Governor or Tribal Chief Executive may subsequently request a Major Disaster Declaration for the fire incident(s). FEMA evaluates such requests based on damage and costs not covered under the FMAG Program, such as public infrastructure damage. If the President declares a Major Disaster and authorizes the PA Program, FEMA usually funds all costs related to those fire incidents under the PA Program for efficiency in administration of assistance and to avoid a duplication of benefits between programs.

E. Federal Cost Share

The assistance FEMA provides through its PA Program is subject to a cost share.[39] The cost share ensures local interest and involvement through financial participation. The Federal share is not less than 75 percent of the eligible costs.[40] FEMA may recommend an increase up to 90 percent if actual Federal obligations, excluding administrative costs, meet or exceed a qualifying threshold.[41]

For Emergency Work specifically, the Federal cost share may be increased in limited circumstances, and for limited periods of time, if warranted.[42] See Chapter 6:XIII, *Increased Federal Cost Share for a Limited Timeframe*, for details on how FEMA applies the increased Federal cost share.

[34] 44 C.F.R. § 206.40(c).
[35] 44 C.F.R. § 206.40(d).
[36] 44 C.F.R. § 206.2(a)(21).
[37] Stafford Act § 420, 42 U.S.C. § 5187; 44 C.F.R. Part 204.
[38] www.fema.gov/media-library/assets/documents/92379.
[39] 44 C.F.R. § 206.203(b).
[40] Stafford Act §§ 403(b), 406(b), 407(d), and 503(a), 42 U.S.C. §§ 5170b, 5172, 5173, 5193; 44 C.F.R. §§ 206.47(a) and 206.65.
[41] 44 C.F.R. § 206.47(b).
[42] 44 C.F.R. § 206.47(d).

The Applicant can only apply other Federal award funds toward the PA non-Federal cost share if the other Federal agency has specific statutory authority allowing its funds to be used to meet cost-share requirements.[43] For example, the U.S. Department of Housing and Urban Development's (HUD's) Community Development Block Grant (CDBG) program may be used for the non-Federal share on PA projects if certain requirements are met. FEMA applies the cost share at the project level. Therefore, any other agency's Federal funds must be applied at the project level and may not be used across multiple projects (with exception of Permanent Work Alternative Procedure projects as described in Chapter 8:VIII, *Capped Projects*). Further, if the Applicant uses funds from another Federal agency to meet the non-Federal share, it must meet all requirements of the other agency as well as all PA Program requirements. The Applicant cannot apply PA funds toward the non-Federal cost share of other Federal agency awards.

V. Recipient Administrative Requirements

When the Presidential declaration authorizes assistance to SLTT governments and certain types of PNP organizations, FEMA implements the PA Program. The Recipient is responsible for completing an application for assistance and submitting required documents before FEMA can provide PA funding. This section describes the required documents. The Recipient may upload these documents into PA Grants Portal at the Event Level (see Chapter 3:I, *Public Assistance Web-based Systems*). If the document is related to multiple disasters, such as a Hazard Mitigation Plan, the Recipient should upload it to its Organizational Profile.

Recipient-Led Public Assistance Disasters

FEMA may approve a Recipient to manage PA disasters. Recipients may choose a scalable approach by performing any one or more of the following key functions: customer service, site inspections, and scoping and costing. The *State-Led Public Assistance Guide* provides guidance on the processes, resources, and capabilities required (www.fema.gov/media-library/assets/documents/136089).

A. Application for Federal Assistance

The declared State, Territorial, or Tribal government must complete and submit Standard Form (SF) 424, Application for Federal Assistance, and SF-424D, Assurances for Construction Programs[44] before FEMA provides assistance. The SF-424 includes the period of performance (POP) for the PA award (referred to as the prime award). The prime award POP begins on the first day of the incident period and initially extends four years from the declaration date.

B. FEMA-State/Territory/Tribe Agreement

After every declaration, the applicable State, Territorial, or Tribal government enters into an agreement with FEMA regarding the understanding, commitments, and conditions under which FEMA provides assistance (FEMA-State/Territory/Tribe Agreement). FEMA and the Governor or Tribal Chief Executive must sign this agreement before FEMA provides assistance. If necessary, because of exigent circumstances, FEMA may authorize essential emergency services

[43] Stafford Act § 312, 42 U.S.C. § 5155.
[44] 44 C.F.R. § 206.202(e). The SF-424 forms are available at www.grants.gov/web/grants/forms/sf-424-family.html.

or housing assistance under the Individuals and Households Program (IHP) while the agreement is in process for signature.[45]

C. Payment Management System

FEMA provides PA funding to Recipients via the U.S. Department of Health and Human Services (HHS) Payment Management System. Therefore, if an entity is a Recipient for the first time, it must request access to the Payment Management System and complete the Direct Deposit Form (SF-1199A) to obtain a FEMA-specific account before FEMA can provide funding.[46]

D. Administrative Plan

Recipients must have a FEMA-approved Administrative Plan that describes how it intends to administer the PA Program before FEMA provides PA funding for any project. At a minimum, the Administrative Plan must include:

- The agencies responsible for program administration;
- Identification of staffing functions, the source of staff to fill the functions, the management and oversight responsibilities of each function; and
- Procedures for:
  - Notifying potential Applicants of the availability of the PA Program;
  - Conducting Applicant Briefings;
  - Assisting FEMA in determining Applicant eligibility;
  - Participating with FEMA in conducting PDAs;
  - Participating with FEMA in establishing PA mitigation and insurance requirements;
  - Processing appeals, time extension requests, and other project-related correspondence;
  - Complying with Environmental and Historic Preservation (EHP) requirements;
  - Complying with PA administrative requirements including, but not limited to, procurement, contracting, and closeout;
  - Complying with audit requirements;
  - Requesting reimbursement or advanced funds; and
  - Determining staffing and budgeting requirements for proper management of the PA Program.

A Recipient must submit its Administrative Plan to FEMA on an annual basis and an amendment for each incident that occurs within the year if needed to meet current policy guidance or to address the specifics of the new incident. The Recipient must incorporate the approved Administrative Plan into its State, Territorial, or Tribal emergency plan.[47]

E. Hazard Mitigation Plan

Hazard mitigation is most effective when implemented under a comprehensive, long-term mitigation plan. SLTT governments engage in hazard mitigation planning to identify risks and

[45] 44 C.F.R. § 206.44(a).
[46] The Payment Management System Access Form and the SF-1199A are available at pms.psc.gov/.
[47] 44 C.F.R. § 206.207(b). An administrative plan template is available at www.fema.gov/media-library/assets/documents/31208.

vulnerabilities associated with natural disasters and develop long-term strategies for protecting people and property from future incidents. Recipients must have a FEMA-approved Hazard Mitigation Plan before FEMA can provide PA funding for any Permanent Work.[48] The Recipient must show in its plan how it intends to reduce risks from natural hazards and must update the plan every 5 years.

Tribal governments must meet the requirements of 44 C.F.R. § 201.7, *Tribal Mitigation Plans*. States and Territories must meet the requirements of 44 C.F.R. § 201.4, *Standard State Mitigation Plans* or have an Enhanced Mitigation Plan that meets the requirements of 44 C.F.R. § 201.5, *Enhanced State Mitigation Plans*.[49]

[48] 44 C.F.R. § 201.3(c)(1) and (e)(1).
[49] Additional information about the mitigation plan requirement is available at www.fema.gov/hazard-mitigation-planning.

CHAPTER 2: OPERATIONAL COORDINATION

FEMA leads implementation of Stafford Act authorities and coordination of Federal assistance to impacted communities. FEMA's goal is to help communities recover by focusing on their desired goals and outcomes. FEMA refers to this as outcome-driven recovery. This is a problem-solving approach that promotes unity of effort among stakeholders to identify recovery needs, vision, and goals, and to resource holistic recovery solutions. It emphasizes the need for integration of all partners in recovery, appropriate and consistent coordination, and transparency to ensure that a community can set its own goals and priorities, identify strategies to access funding and other resources to meet its goals, and effectively implement projects. This chapter describes how Federal, State, Territorial, and Tribal leadership coordinate during response and recovery operations to ensure successful outcomes.

FEMA conducts incident operations based on the national comprehensive, systematic approach set forth by the *National Incident Management System* (NIMS).[50] NIMS is designed to ensure that local jurisdictions retain command, control, and authority over response and recovery activities for their jurisdictional areas. It establishes consistent structure, concepts, principles, processes, and language at a national level enabling efficient coordination of emergency management operations across all levels of government.

The *National Response Framework* (NRF) and *National Disaster Recovery Framework* (NDRF)[51] build upon NIMS by defining the core capabilities necessary for response and recovery and fostering a holistic, collaborative approach, emphasizing the need for the involvement of the whole community (individuals, families, households, communities, private and nonprofit sectors, faith-based organizations, and all levels of government). The NRF and NDRF detail Federal and SLTT government roles and responsibilities during response and recovery operations.

Incident Command System

The Incident Command System (ICS) is a key component of NIMS and is the organizing principle for Federal response and recovery operations. Refer to the *Incident Management Handbook* for more information on how FEMA applies ICS.

Basic elements of ICS include:

- Establishes common terminology
- Allows organizational structures to be scalable based on the size, complexity, and needs of the operation.
- Establishes a common set of objectives to develop strategies, issue assignments, establish tactics, and document results.
- Utilizes a centralized, coordinated Incident Action Plan (IAP) to guide all activities and manage all resources including personnel, teams, equipment, supplies, and facilities.
- Promotes effective management by ensuring:
  - Unity-of-command;
  - Chain-of-command; and
  - Span-of-control.

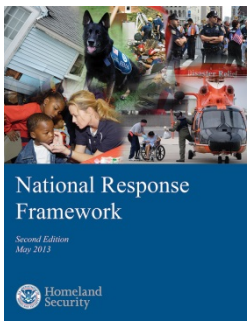
[50] www.fema.gov/media-library/assets/documents/148019.
[51] www.fema.gov/media-library/resources-documents/collections/526.

I. Operational Priorities

A. Community Lifelines

Lifelines are the most fundamental services in the community, that, when stabilized, enable all other aspects of society. FEMA and other Emergency Management organizations use community lifelines to establish and track operational priorities during incident stabilization. The seven lifelines are:

- Safety and security;
- Food, water, and sheltering;
- Health and medical;
- Energy (power and fuel);
- Communications;
- Transportation; and
- Hazardous materials.



Lifelines provide indispensable service to enable the continuous operation of critical business and government services. Analyzing impacts to each of the lifelines allows decision-makers to:

- Rapidly determine whether an incident is large or complex;
- Prioritize and focus response efforts to maintain or restore the most critical services and infrastructure;
- Ensure limited resources can go toward a common goal that requires involvement across the whole community; and
- Promote a response that fosters better integration and communication across the whole community since lifeline management transcends public and private sector boundaries.

FEMA's *Community Lifelines Implementation Toolkit*[52] provides comprehensive information and resources for implementing lifelines during incident response.

B. Incident Action Plan

The Incident Action Plan (IAP) is a written plan defining the objectives for managing the overall incident and addressing the operational priorities. FEMA and the State, Territory, or Tribe develop the IAP through a series of meetings which occur once during each Operational Period (O-Period). The O-Period is the timeframe designated to execute a specific set of actions. During the response phase, this is typically 12-24 hours and FEMA usually expands it to 48-96 hours or longer as the operation shifts into the recovery phase. The IAP is initially organized by lifeline stabilization priorities and shifts to recovery outcome priorities as the lifelines stabilize.

IAP Collaborative Meetings

FEMA and the State, Territorial, or Tribal government conduct a series of meetings throughout the IAP process to identify incident objectives and share situational awareness. The meetings include:

- Initial incident briefing
- Command and general staff meeting
- Operational tactics meeting
- Planning meeting
- Operations briefing

A meeting schedule (ICS Form 230) describes meeting locations and required attendees.

[52] www.fema.gov/media-library/assets/documents/177222.

The IAP provides the following information:

- Work assignments delineated by division and group;
- Resources required to complete work assignments;
- Operational facilities and reporting locations for plan execution; and
- Organization charts, contact information, and medical, safety, and communications plans.

The PA Group Supervisor (PAGS) ensures that PA Program work assignments, information, and contributions toward larger recovery outcomes are accurately reflected in the IAP. For additional information on the IAP process, see the *Incident Action Planning Guide*.[53]

II. Response and Recovery Coordination

Federal, State, Territorial, and Tribal government coordination begins with response during the pre-award phase and continues through the completion of recovery operations and closeout of the award. Response operations begin to transition to recovery when immediate threats to health and safety begin to stabilize. This timeframe varies by entity depending on the level of impact and response capabilities.

A. Response Coordination

FEMA operates 24-hour National and Regional Watch Centers that provide national and regional awareness on potential, developing, or ongoing situations that may require a coordinated Federal response. When warranted, based on situational awareness provided by the Watch Centers, FEMA activates its National and Regional Response Coordination Centers (NRCC/RRCC). These coordination centers function as multi-agency coordination facilities to prepare for and respond to the immediate needs of an incident, as identified by the State, Territorial, or Tribal government. The RA determines when to activate the RRCC. The FEMA Administrator may activate the NRCC when incidents cross regional borders, have broad geographic implications, or are nationally significant. The NRCC allocates and prioritizes national resource deployments and coordinates with the RRCC to provide additional support for immediate needs.

As described in the NRF various agencies that provide response capabilities are grouped into Emergency Support Functions (ESFs). During response, ESFs are a critical mechanism to coordinate functional capabilities and resources provided by Federal departments and agencies, along with certain private-sector and nongovernmental organizations. ESFs are activated selectively and may not be activated for all incidents. The NRF describes the composition and mission functions of each of the ESFs.[54]

When FEMA activates the RRCC or NRCC, it also activates representatives from the appropriate ESFs to deploy to the RRCC or NRCC to support incident objectives consistent with the purpose and scope defined in the NRF annex for each of the ESFs. PA typically staffs a position in the RRCC or NRCC to support incident objectives related to debris removal and critical infrastructure (facilities that provide transportation, energy, communications, water, or emergency services). This position coordinates activities of ESFs 1 (Transportation), 3 (U.S. Army Corps of Engineers), 10 (U.S. Environmental Protection Agency), and 12 (Energy).

[53] *The Incident Action Planning Guide* is available at www.fema.gov/media-library/assets/documents/25028.
[54] The NRF is available at www.fema.gov/media-library/assets/documents/117791.

FEMA's National Incident Support Manual (NISM) provides additional information on NRCC operations.[55]

B. Recovery Coordination

FEMA's goal throughout the recovery phase is to assist communities and Applicants with achieving desired outcomes and building resilience. The National Preparedness Goal[56] identifies eight core capabilities that are critical for recovery. Various agencies that provide these recovery capabilities are grouped into the following six Recovery Support Functions (RSFs)[57]: Community Planning and Capacity Building; Economic Recovery; Health and Social Services; Housing; Infrastructure Systems; and Natural and Cultural Resources. As ESF activities subside, RSF activities ramp up and require continued information sharing and coordination.

RSFs support SLTT recovery efforts by coordinating among Federal and SLTT agencies and nongovernmental and private organizations to problem-solve and improve access to needed resources. The NDRF further describes the composition and mission of each RSF.[58] Activation of each RSF depends on incident-specific recovery issues.

The Federal Interagency Operational Plan (FIOP)[59] describes how Federal recovery field leadership, RSFs, and related entities work in coordination with nongovernmental and private organizations to support SLTT recovery efforts. It provides a flexible structure for disaster recovery leaders to address the specific needs of the incident and enhance sustainability and resilience of communities in a unified and collaborative manner.

1. Field Operations

Prior to a declaration, FEMA may deploy a Regional or National Incident Management Assistance Team (IMAT) to provide additional situation awareness and manage Federal response operations from the field in the initial days or weeks after an incident.

Once the President issues an Emergency or Major Disaster Declaration, the Regional Watch Center or RRCC deploys key personnel to set up the initial field operations structure and assume primary responsibility for response coordination. At this point, primary responsibility for infrastructure-related tasks conducted at the RRCC are transitioned to the Infrastructure Branch Director (IBD) or PAGS.

Public Assistance Program Leadership

In large-scale operations, the IBD is responsible for leading delivery of the PA Program and providing operational direction to FEMA PA staff and infrastructure-related ESFs. PAGS serve as deputies to the IBD. When ESFs are not activated, delivery of the PA Program is led by the PAGS. For simplicity, the PAPPG uses the term PAGS for functions that an IBD may also perform.

[55] The NISM is available at www.fema.gov/media-library/assets/documents/24921.
[56] www.fema.gov/media-library/assets/documents/25959.
[57] Recovery Support Functions are teams of Federal and national partners with a Coordinating Agency, primary and supporting agencies, State and Territorial agencies, and other organizations. The Coordinating Agency is usually the entity that can bring in resources to address needs, whereas the support agencies provide technical and subject matter expertise along with additional information. Additional information is available at www.fema.gov/recovery-support-functions.
[58] See Table 3 of The National Disaster Recovery Framework, which is available at http://www.fema.gov/national-disaster-recovery-framework.
[59] www.fema.gov/federal-interagency-operational-plans.

The declaration identifies the FCO.[60] The FCO works in partnership with the State or Territorial Coordinating Officer (SCO)[61] and Governor's Authorized Representative (or for Tribal declarations, the Tribal Coordinating Officer (TCO) and TAR) to coordinate Federal resources and disaster assistance programs.[62] FEMA and the State, Territorial, or Tribal government may initially operate at an Initial Operating Facility (IOF) until a facility is identified and established as a Joint Field Office (JFO). The IOF is usually at the State, Territorial, or Tribal Emergency Operations Center (EOC). The JFO is a temporary facility in proximity to the area affected by the incident that becomes the central location for coordination of response and recovery activities. Staff at the IOF transition to the JFO once it is established, typically several days to two weeks. FEMA's *Incident Management Handbook*[63] provides additional information on field operating structures and functional responsibilities.

Virtual Joint Field Office

Virtual JFOs allow for the management and coordination of response and recovery operations from a FEMA Regional Office. During select incidents, a Virtual JFO may be a preferred alternative to a conventional JFO for managing field operations.

C. Public Assistance Coordination and Planning

Primary responsibility for management and delivery of the PA Program rests with the PAGS. The PAGS coordinates with the Recipient to efficiently implement the PA Program. Additionally, the PAGS fosters collaboration and information sharing with other federal agencies (OFAs) and nongovernmental partners through participation in the RSFs and other operational task forces.

PA staff usually deliver the program from the JFO and receive project development and processing support from the designated Consolidated Resource Center (CRC). CRCs are permanent FEMA offices where subject matter experts and specialized resources provide support to all PA operations. The PAGS coordinates with the CRC Director to provide situational awareness and ensure efficient, synchronized operations. CRC responsibilities include project scoping, costing, validation, and compliance reviews.

PA staff at the JFO are responsible for providing customer service to each Applicant, conducting site inspections, obtaining project information and documentation, determining eligibility, and awarding projects. PA staff at the JFO receive policy support from the respective FEMA regional office. When necessary, the FEMA regional office engages FEMA Headquarters on complex policy matters.

FEMA and the Recipient coordinate closely on various operational planning elements. FEMA uses both PDA and Recipient-provided information to determine the initial needs of the operation. This information enables the PAGS and Recipient to determine initial staffing and training requirements, organizational structure, and logistical needs. Additionally, it provides awareness on various operational aspects such as potential policy issues or the need for task forces or specialized personnel for specific types of infrastructure.

[60] Stafford Act §§ 302(a) and (d), 42 U.S.C. § 5143; 44 C.F.R. §§ 206.2(a)(11) and 206.41(a).
[61] Stafford Act § 302(c), 42 U.S.C. § 5143; 44 C.F.R. §§ 206.2(a)(23) and 206.41(c).
[62] Stafford Act § 302(b), 42 U.S.C. § 5143; 44 C.F.R. § 206.42.
[63] www.fema.gov/media-library/assets/documents/137465.

The PA Program is only one of many programs across numerous agencies that contribute to recovery projects in communities. Various agencies require incident impact information to focus their support appropriately and PA staff require assistance from other agencies to provide the best customer service possible to Applicants. Therefore, it is crucial for PA staff to foster partnerships and keep open lines of communication.

CHAPTER 3: APPLICANT COORDINATION AND ELIGIBILITY

FEMA and the Recipient work in partnership to administer the PA Program and provide customer service to each Applicant. The Recipient sets operational priorities for the incident and each Applicant identifies its priorities. This chapter describes the PA activities that occur throughout Phase I of the PA Program delivery process, *Operational Planning and Applicant Coordination*, which includes the initial stages of Applicant coordination and Applicant eligibility determinations. Key milestones include conducting all Applicant Briefings, receiving and processing all Requests for Public Assistance (RPAs), and completing all Recovery Scoping Meetings. This chapter defines RPA requirements and PA policy on Applicant eligibility. It describes the web-based systems that FEMA, Recipients, and Applicants need to use for PA award processing, including submittal of information. This chapter also defines correspondence requirements and how FEMA documents its eligibility determinations.

I. Public Assistance Web-based Systems

FEMA uses web-based systems to provide transparency to all stakeholders throughout the PA Program delivery process. FEMA uses PA Grants Manager to review RPAs, develop and review all aspects of a project application, track the status of project application development, and receive information from Recipients and Applicants. Recipients and Applicants use PA Grants Portal to submit all documentation and information to FEMA, review all aspects of PA project applications, and track the status of PA project applications. PA Grants Manager and Grants Portal interface and are updated on an ongoing basis for continuous improvement.[64]

Technical Assistance for PA Grants Manager and Grants Portal

FEMA provides technical assistance to individuals using PA Grants Manager and Grants Portal via a Help Line at 1-866-337-8448 and email correspondence at FEMA-Recovery-PA-Grants@fema.dhs.gov.

Applicants upload documentation and information to different areas within Grants Portal.[65] Once an entity has an Organizational Profile in PA Grants Portal, it can upload documents to its Organizational Profile anytime regardless of whether it has a current disaster. This section of the portal is not incident-specific. Therefore, Applicants should upload documents that may apply across multiple incidents, such as labor or insurance policies, to this location. Applicants upload any documents that pertain to a specific disaster, but not a specific project to the Applicant Profile. If the documentation is specific to one project, Applicants upload it to the project section. If it pertains to a specific damage line item, Applicants upload it to the damage section.

[64] FEMA staff may submit change requests through the PA Change Control Tool at portalapps.fema.net/apps/ORR/NewPA/Pages/SubmitRequest-CCT-P3.aspx. Recipients and Applicants may request changes via email at FEMA-Recovery-PA-Grants@fema.dhs.gov.
[65] PA Grants Portal user manuals are available in the resource tab in the portal.

II. Applicant Briefing

As soon as possible following the President's declaration, the Recipient conducts briefings for all potential Applicants (i.e., SLTT government entities and PNPs).[66] The Recipient is responsible for notifying potential Applicants of the date, time, and location of the Applicant Briefing. FEMA attends the Applicant Briefing to support the Recipient. During these briefings, the Recipient provides high-level information regarding the PA Program, such as:

- Overview of the PA Program delivery process (e.g., PA Grants Portal, application procedures);
- Program deadlines;
- General eligibility criteria;
- Project funding;
- Hazard mitigation;
- Alternative Procedures;
- Compliance requirements (procurement, EHP, and insurance); and
- Administrative requirements, including documentation and recordkeeping.

To obtain maximum benefit from the information presented at the briefing, a potential Applicant should send representatives from its management, emergency response, public works, and finance department and designate a primary point of contact to interact with the Recipient and FEMA.

III. Request for Public Assistance

The RPA[67] is an application for the PA Program. If a SLTT government entity or PNP wishes to seek PA funding, it must first submit an RPA to FEMA, through the Recipient. FEMA accepts RPAs through PA Grants Portal. If a Tribal government is its own Recipient, it submits its RPA directly to FEMA via PA Grants Portal. Prior to submitting RPAs to FEMA, the Recipient must review and approve each RPA and provide its assessment of the Applicant's risk of noncompliance as required by 2 C.F.R. § 200.331(b).

Using the RPA, the Applicant provides general information about its organization, including physical location and point of contact. Given the necessity to collaborate with each Applicant early in the PA Program implementation process, FEMA's expectation is that the Recipient collect RPAs as soon as possible after the respective area is designated in the declaration. However, FEMA accepts RPAs up to 30 days from the date the respective area was designated.[68] FEMA may extend the deadline for submitting an RPA if the Recipient submits a request in writing with justification based on extenuating circumstances beyond the Applicant's or Recipient's control.[69]

Only certain PNPs are eligible Applicants. Therefore, FEMA requires additional documentation and information with PNP RPAs to evaluate eligibility. PNP Applicants must also submit its

[66] 44 C.F.R. § 206.207(b)(1)(iii)(B).
[67] www.fema.gov/media-library/assets/documents/10145.
[68] 44 C.F.R. § 206.202(c).
[69] 44 C.F.R. § 206.202(f)(2).

facility-specific information in Grants Portal with all applicable documentation listed in Chapter 3:VI.D.4, *Private Nonprofit Application Documentation Requirements*.

IV. Written Correspondence

Throughout this document, FEMA notes specific instances in which the Applicant must obtain FEMA approval. All requests for FEMA approval must be submitted in writing through the Recipient. The Recipient must forward the correspondence to FEMA with its recommendation. One exception is Request for Information (RFI) responses. When the Applicant submits a response to an RFI, it may submit the response simultaneously to the Recipient and FEMA for expediency. Unless otherwise noted, FEMA calculates all deadlines based on calendar days. The RA has the authority to respond to all written correspondence unless otherwise noted. The RA usually delegates this authority to the FCO upon a Presidential declaration.[70] The RA or FCO may further delegate authorities as appropriate. FEMA usually provides its response to the Recipient, which subsequently forwards FEMA's determination to the Applicant (in some instances FEMA may send correspondence simultaneously to the Recipient and the Applicant, such as with notifications of ineligibility determinations, appeal responses, and RFIs). See Figure 2. *Map of FEMA Regions* for the geographical responsibilities of each FEMA Region.

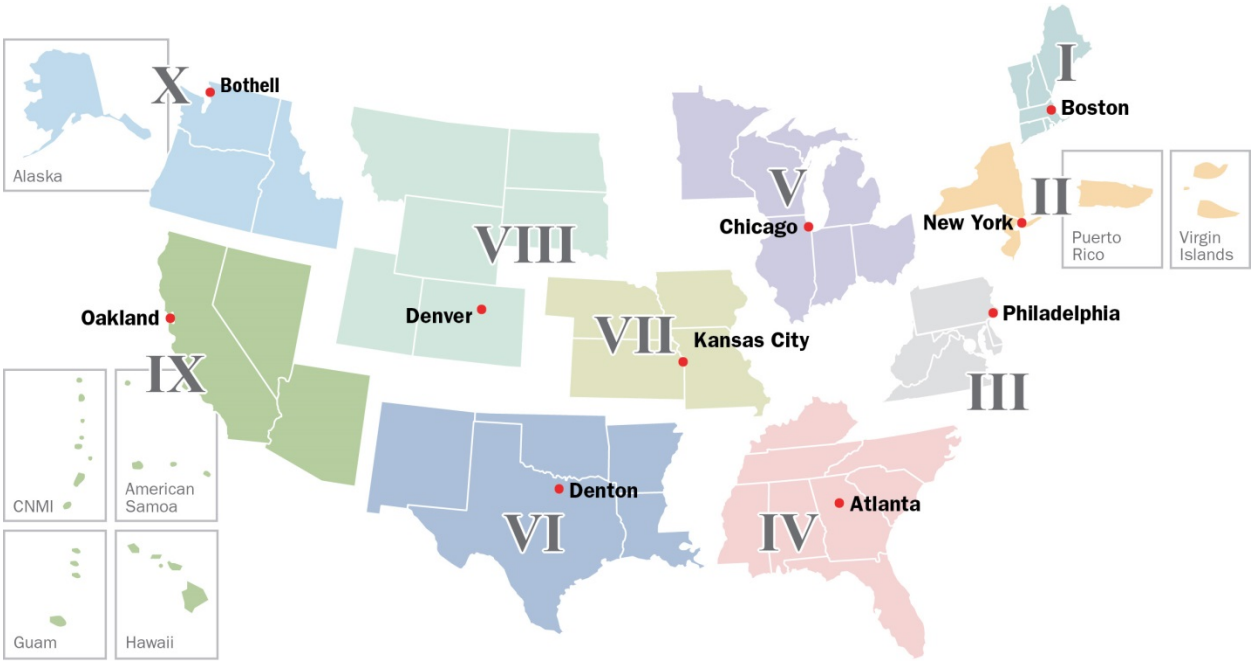


Figure 2. Map of FEMA Regions

[70] 44 C.F.R. § 206.41(b).

V. Eligibility Determinations

The four basic components of PA eligibility are:

- Applicant;
- Facility;
- Work; and
- Cost.

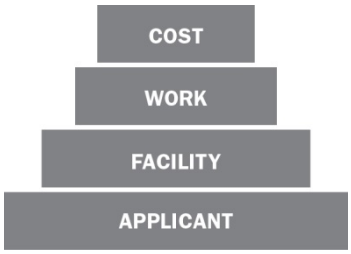


Figure 3. PA Eligibility Pyramid

FEMA refers to these components as the building blocks of an eligibility pyramid. FEMA evaluates each building block to determine eligibility, starting at the foundation (Applicant) and working up to cost at the top of the pyramid (see Figure 3. *PA Eligibility Pyramid*). There are two exceptions to the standard eligibility pyramid. For PNPs, FEMA must determine whether the PNP owns or operates a facility that provides an eligible service in order to determine whether the Applicant is eligible (see Chapter 3:VI.D. *Private Nonprofit Organizations*, for additional information and a pyramid specific to PNP eligibility). Secondly, for SLTT government Applicants, evaluating facility eligibility is not a necessary step for most Emergency Work, as described in Chapter 7. *Emergency Work Eligibility*.

A. Requests for Information

FEMA may require additional information or documentation to evaluate eligibility. In these cases, FEMA requests the information or documentation by submitting an RFI. Responses to RFIs are due by the deadline specified in the RFI. FEMA usually requires responses within 15 days of the Applicant's receipt of the RFI. FEMA establishes the deadline based on the nature of the request and consideration of the type and volume of information or documentation requested. Therefore, the amount of time allowed may vary.

B. Notification of an Ineligibility Determination

The Program Delivery Task Force Leader (PDTFL) coordinates with the PAGS to address eligibility issues as projects are developed.

When determining that the Applicant, facility, work, or cost is ineligible, FEMA provides written notice via a Determination Memorandum (DM) or a letter that includes:

- Explanation of what assistance FEMA denied and, as applicable, the amount of assistance denied for each item;
- The basis for FEMA's denial, including the provisions of law, regulation, or policy that support the determination;
- A complete list of all documents reviewed (clearly titled for future reference); and
- Information regarding the Applicant's rights and procedures to appeal.

Complex Eligibility Issues

For complex eligibility issues, the PAGS in coordination with the FCO and the Region consults the PA Policy and Regulations Branch at FEMA Headquarters.

When FEMA approves funding for an item with complex eligibility, it documents its decision-making in a DM.

FEMA transmits the letter or DM simultaneously to the Recipient and Applicant via a method that confirms receipt.[71] This serves as the formal notification of FEMA's determination setting forth the Applicant's appeal rights.

The PDTFL is responsible for ensuring all information and documentation directly or indirectly considered in FEMA's eligibility determination is in PA Grants Manager. This may include, but is not limited to:

- Projects and project amendments;
- Notifications of eligibility determinations;
- Supporting backup documentation;
- Correspondence;
- Photographs;
- Technical reports; and
- Other relevant information.

FEMA considers this the Administrative Record.

C. Appeal Rights and Requirements

The Applicant may appeal any FEMA determination related to an application for, or the provision of, assistance under the PA Program.[72] This includes, but is not limited to, Applicant eligibility denials, nonconcurrence on eligible damage or scopes of work (SOWs), denial of time extensions, closeout determinations, and deobligations resulting from an audit.

FEMA provides the Applicant with two opportunities to appeal a determination:

- The first appeal is to the RA.[73]
- If the Applicant disagrees with the first appeal determination, it may submit a second appeal to the Assistant Administrator of the Recovery Directorate at FEMA Headquarters[74]

At any point in the appeal process, the Applicant may withdraw its appeal by submitting a written request simultaneously to the Recipient and FEMA. FEMA sends a written acknowledgment simultaneously to the Recipient and Applicant.

All second appeal decisions represent the agency's final administrative decision on the matter.

1. Appeal Deadlines

The Applicant must submit a written appeal to the Recipient within 60 days of receiving FEMA's written notification of its determination (FEMA's eligibility determination or first appeal decision).[75] The Recipient must forward the appeal with its written recommendation to

[71] FEMA may transmit the document via any method that confirms receipt such as PA Grants Manager, certified or return receipt mail, or an email with read-receipt acknowledgement.
[72] Stafford Act § 423, 42 U.S.C. § 5189a; 44 C.F.R. § 206.206. FEMA requires Applicants to waive appeal rights on Permanent Work Alternative Procedures Projects unless it is related to a cost adjustment made by FEMA after the Fixed-Cost Offer is accepted.
[73] 44 C.F.R. § 206.206(b)(1).
[74] 44 C.F.R. § 206.206(b)(2).
[75] 44 C.F.R. § 206.206(c)(1).

FEMA within 60 days of its receipt of the appeal.[76] If either the Applicant or Recipient does not meet the respective 60-day deadlines, FEMA will deny the appeal as untimely.

2. Appeal Content

The Applicant must include:

- ☐ All relevant documentation supporting its position;
- ☐ The specific funding amount (or amounts if there are multiple issues on appeal) in dispute, as applicable; and
- ☐ Citations to the provisions of law, regulation, or policy (applicable to the respective disaster) with which the Applicant believes FEMA's determination was inconsistent.[77]

3. Appeal Review

Upon receipt of the appeal, FEMA reviews the appeal content and uses the Administrative Record and the laws, regulations, and policies applicable to the respective incident to analyze the appeal. FEMA may request additional information via an RFI to adequately adjudicate the appeal or it may make its decision based on the documentation and information provided at the time of appeal submission. Within 90 days of receiving the appeal, FEMA takes one of the following three actions:

- Requests additional information specifying the date FEMA must receive the information (usually 30 days). Within 90 days of receiving the information (or within 90 days of the expiration of the deadline to respond), FEMA provides its appeal decision simultaneously to the Recipient and Applicant;[78]
- Submits the appeal to an independent expert, or experts, for technical review and recommendations. Within 90 days of receiving the technical review recommendations, FEMA provides its appeal decision simultaneously to the Recipient and Applicant;[79] or
- Provides its written decision simultaneously to the Recipient and Applicant using a method that confirms receipt.[80]

(a) Requests for Information on Appeals

When FEMA issues an RFI, it includes a deadline for the Applicant to submit the information, usually 30 days.[81] FEMA issues the RFI simultaneously to the Recipient and Applicant via a method that confirms receipt.

FEMA generally issues an RFI when:

- It identifies specific documentation or information that, if provided, might impact the outcome of the appeal or assist FEMA in adequately responding to the appeal; or

[76] 44 C.F.R. § 206.206(c)(2).
[77] 44 C.F.R. § 206.206(a).
[78] 44 C.F.R. § 206.206(c)(3).
[79] 44 C.F.R. § 206.206(d).
[80] FEMA may transmit notification via PA Grants Manager, certified or return receipt mail, email with read-receipt acknowledgement, or other methods that confirm receipt.
[81] FEMA establishes the deadline based on the nature of the request and consideration of the type and volume of information or documentation requested.

- The original eligibility determination is incorrect based on applicable law, regulation, or policy, but FEMA has identified a new basis for denying all, or a portion of, the appeal.

On first appeal, if FEMA identifies potentially ineligible SOW or costs that were not previously denied it issues an RFI that includes an explanation of the:

- New eligibility issue(s);
- Basis for the determination including an explanation of the applicable provisions of law, regulation, or policy justifying the decision;
- Amount of funding subject to denial and deobligation; and
- Specific information or documentation required to justify or further evaluate the eligibility issue(s).

FEMA proceeds with its review upon receipt of the Applicant's response to the RFI or expiration of the deadline to respond.

(b) Remanding a Second Appeal

When reviewing a second appeal, the Assistant Administrator of the Recovery Directorate at FEMA headquarters, or designee, may identify an issue that necessitates sending the appeal back to the RA. This should be reserved for cases when there is no other acceptable way to resolve the issue.

4. Appeals for Alternative Procedures Projects

FEMA is piloting Alternative Procedures on Permanent Work Projects. Due to the goals, intent, and benefits of the Alternative Procedures, FEMA does not consider appeals on Alternative Procedures Permanent Work Projects (see Chapter 8:VIII. Capped Projects) unless it is related to a cost adjustment made by FEMA after the Fixed-Cost Offer is accepted (i.e., related to insurance, noncompliance, or an audit). Any disagreement on damage, SOW, or cost must be resolved prior to accepting the fixed-cost offer. Additionally, FEMA does not consider appeals on time extension denials for Alternative Procedures Projects.

D. Arbitration

Under certain circumstances, an Applicant that disputes a FEMA determination related to its PA application, including eligibility for assistance or repayment of assistance, have a right of arbitration.[82] Additional information is provided in FEMA's Fact Sheet *Public Assistance Appeals and Arbitration under the Disaster Recovery Reform Act* at www.fema.gov/media-library/assets/documents/175821.

[82] Stafford Act § 423(d), 42 U.S.C. § 5189a, as amended by the Disaster Recovery Reform Act § 1219.

VI. Applicant Eligibility

FEMA provides assistance to eligible Applicants, which are defined below.[83] As shown in Figure 4. *Applicant Eligibility*, FEMA must first determine whether the Applicant is eligible before evaluating the Applicant's claim. FEMA and the Recipient review the RPA to determine whether the Applicant is eligible for assistance.[84] This section provides FEMA's policy on Applicant eligibility.

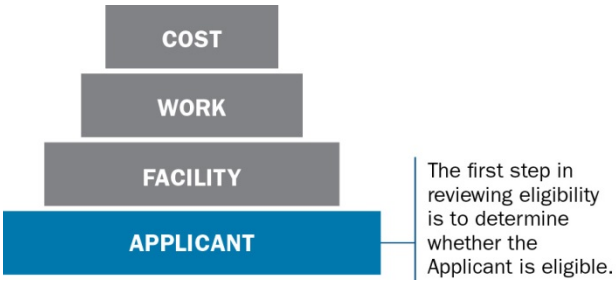


Figure 4. Applicant Eligibility

A. State and Territorial Governments

State and Territorial governments, including the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands, are eligible Applicants. This includes any agency or instrumentality thereof, exclusive of local governments.[85] The State or Territorial government designates one of the agencies (usually the emergency management agency) as the Recipient. The Recipient serves as the pass-through entity to the other agencies, which are Subrecipients.

B. Tribal Governments

Federally recognized Indian Tribal governments, including Alaska Native villages and organizations, are eligible Applicants. Alaska Native Corporations are ineligible as they are privately owned.[86]

C. Local Governments

The following types of local governments are eligible Applicants:[87]

- Counties and parishes;
- Municipalities, cities, towns, boroughs, and townships;
- Local public authorities;
- School districts;
- Intrastate districts;
- Councils of governments (regardless of whether incorporated as nonprofit corporations under State law);
- Regional and interstate government entities;
- Agencies or instrumentalities of local governments;
- State recognized Tribes; and
- Special districts established under State law.

[83] 44 C.F.R. § 206.222.
[84] 44 C.F.R. § 206.207(b)(1)(iii)(C).
[85] Stafford Act § 102(4), 42 U.S.C. § 5122; 44 C.F.R. §§ 206.2(a)(22) and 206.222(a); and 2 C.F.R. § 200.90.
[86] Stafford Act § 102(6), 42 U.S.C. § 5122; 44 C.F.R. §§ 206.201(i) and 206.222(c); and 2 C.F.R. § 200.54.
[87] Stafford Act § 102(8), 42 U.S.C. § 5122; 44 C.F.R. §§ 206.2(a)(16) and 206.222(a); and 2 C.F.R. § 200.64.

- Community Development Districts are special districts that finance, plan, establish, acquire, construct or reconstruct, operate, and maintain systems, facilities, and basic infrastructure within their respective jurisdictions. To be eligible, a Community Development District must own and be legally responsible for maintenance, and operation of an eligible facility that is open to and serves the general public.[88]

The State or a political subdivision of the State may submit applications on behalf of rural communities, unincorporated towns or villages, and other public entities not listed above.[89]

D. Private Nonprofit Organizations

Only certain PNPs are eligible Applicants. To be an eligible PNP Applicant, the PNP must show that it has:

Figure 5. PNP Eligibility

- A ruling letter from the U.S. Internal Revenue Service that was in effect as of the declaration date and granted tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code; or
- Documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law.[90]

If the organization is not required to obtain 501(c)(3) status or tax-exempt status under applicable State law, the organization must provide articles of association, bylaws, or other documents indicating that it is an organized entity, and a certification that it is compliant with Internal Revenue Code section 501(c)(3) and State law requirements.

Additionally, as shown in Figure 5. *PNP Eligibility*, prior to determining whether the PNP is eligible, FEMA must first determine whether the PNP owns or operates an eligible facility.[91] For PNPs, an eligible facility is one that provides one of the services listed below (the declared incident must have damaged the facility):

- A facility that provides a critical service, which is defined as education, utility, emergency, or medical (see Table 1. *PNP Eligible Critical Services*);[92] or
- A facility that provides a noncritical, but essential social service AND provides those services to the general public (see Table 2. *PNP Eligible Noncritical, Essential Social Services*).[93] PNP facilities generally meet the requirement of serving the general public if ALL of the following conditions are met.[94]

[88] Community Development Districts generally meet the requirement of serving the public based on the same criteria used for PNPs in Chapter 3:VI.D. *Private Nonprofit Organizations*.
[89] Stafford Act § 102(8)(c), 42 U.S.C. § 5122; 44 C.F.R. § 206.2(a)(16)(iii).
[90] 44 C.F.R. § 206.221(f).
[91] 44 C.F.R. § 206.222(b).
[92] Stafford Act § 406(a)(3)(B), 42 U.S.C. § 5172; 44 C.F.R. § 206.221(e).
[93] 44 C.F.R. § 206.221(e)(7).
[94] FEMA also uses this criteria to determine whether a Community Development District serves the public.

  - Facility use is not limited to any of the following:
    - A certain number of individuals;
    - A defined group of individuals who have a financial interest in the facility, such as a condominium association;
    - Certain classes of individuals; or
    - An unreasonably restrictive geographical area, such as a neighborhood within a community;
  - Facility access is not limited to a specific population (such as those with gates or other security systems intended to restrict public access); and
  - Any membership fees meet all of the following criteria:
    - Are nominal;[95]
    - Are waived when an individual can show inability to pay the fee;
    - Are not of such magnitude to preclude use by a significant portion of the community; and
    - Do not exceed what is appropriate based on other facilities used for similar services.
- Certain types of facilities, such as senior centers, that restrict access in a manner clearly related to the nature of the facility, are still considered to provide essential social services to the general public.[96]

In cases where the facility provides multiple services, such as a community center, FEMA reviews additional items to determine the primary service that facility provides. Facilities established or primarily used for political, athletic, recreational, vocational, or academic training, conferences, or similar activities are ineligible (see Table 3. *PNP Ineligible Services*).

[95] FEMA considers the provision of services with a high membership initiation fee or high annual dues to be restrictive to certain populations. FEMA may consider the provision of services with a low fee that only covers administrative processing costs or a fee that can be waived upon demonstration of need to be accessible to the general public.

[96] Per Stafford Act §§ 102(11)(B) and 406(a)(3)(C), 42 U.S.C. §§ 5122 and 5172, organizations operating houses of worship that limit leadership or membership to persons who share a religious faith or practice still provide essential social services to the general public.

1. Private Nonprofit Critical Services

Table 1. PNP Eligible Critical Services

<table>
<tr><th colspan="2">PNP ELIGIBLE CRITICAL SERVICES</th></tr>
<tr><td>

EDUCATION

- Primary or secondary education as determined under State law and provided in a day or residential school, including parochial schools; OR
- Higher-education institutions that meet all of the following criteria:
  - Admit students or persons having a high school diploma or equivalent;
  - Are legally authorized to provide education beyond a secondary level;
  - Award a bachelor's degree or 2-year degree that is acceptable as full credit toward a bachelor's degree or provides at least a 1-year training program to prepare students for gainful employment in a recognized occupation; and
  - Are accredited by a nationally recognized agency or association (as determined by the Secretary of Education).
- Educational facilities that meet the above criteria are eligible without regard to religious character or use for religious instruction.

</td><td>

EMERGENCY MEDICAL

- Emergency medical care (diagnosis or treatment of mental or physical injury or disease) provided in:
  - Clinics
  - Dialysis facilities
  - Facilities that provide in-patient care for convalescent or chronic disease patients
  - Hospices and nursing homes
  - Hospitals and related facilities, including:
    - Central service facilities operated in connection with hospitals
    - Extended-care facilities
    - Facilities related to programs for home-health services
    - Laboratories
    - Self-care units
    - Storage, administration, and record areas
  - Long-term care facilities
  - Outpatient facilities
  - Rehabilitation centers

</td></tr>
<tr><td>

UTILITY

- Communications transmission and switching, and distribution of telecommunications traffic
- Electric power generation, transmission, and distribution.
- Irrigation to provide water for drinking water supply, fire suppression, or electricity generation
- Sewer and wastewater collection, transmission, and treatment
- Water treatment, transmission, and distribution by a water company supplying municipal water

</td><td>

EMERGENCY SERVICES

- Ambulance
- Fire protection
- Rescue
- Public broadcasting that monitor, receive, and distribute communication from the Emergency Alert System to the public

</td></tr>
<tr><td colspan="2">Administrative and support facilities essential to the provision of the PNP critical service are eligible facilities.</td></tr>
</table>

2. Private Nonprofit Essential Social Services

Table 2. PNP Eligible Noncritical, Essential Social Services

PNP ELIGIBLE NONCRITICAL, ESSENTIAL SOCIAL SERVICES	

Community centers established and primarily used for the following services (or similar) to the general public:
• Art services authorized by a SLTT government, including, but not limited to:
  • Arts administration
  • Art classes
  • Management of public arts festivals
  • Performing arts classes
• Community center activities that serve the public
• Educational enrichment activities that are not vocational, academic, or professional training. Examples include hobby or at-home pursuits, such as:
  ○ Car care
  ○ Ceramics
  ○ Gardening
  ○ Personal financial and tax planning
  ○ Sewing
  ○ Stamp and coin collecting
• Multi-purpose arts programming
• Senior citizen projects, rehabilitation programs, community clean-up projects, blood drives, local government meetings, and similar activities
• Services and activities intended to serve a specific group of individuals (e.g., women, African Americans, or teenagers) provided the facility is otherwise available to the public on a non-discriminatory basis
• Social activities to pursue items of mutual interest or concern, such as:
  ○ Community board meetings
  ○ Neighborhood barbecues
  ○ Various social functions of community groups
  ○ Youth and senior citizen group meetings
• Performing arts centers with a primary purpose of producing, facilitating, or presenting live performances, including:
  ○ Construction of production materials
  ○ Creation of artistic works or productions
  ○ Design
  ○ Professional training
  ○ Public education
  ○ Rehearsals
	Facilities that do not provide medical care, but provide:
	• Alcohol and drug treatment and other rehabilitation services
	• Assisted living
	• Custodial care, even if the service is not provided to the general public (including essential administration and support facilities)
	• Childcare
	• Center-based childcare, even if not provided to the public
	• Day care for individuals with disabilities or access and functional needs (for example, those with Alzheimer's disease, autism, muscular dystrophy)
	• Food assistance programs, including Food Banks and storage of food for Food Banks
	• Health and safety services, including animal control services
	• Homeless shelters
	• Houses of worship
	• Libraries
	• Low-income housing (as defined by Federal or SLTT law or regulation)
	• Museums:
	  ○ Constructed, manufactured, or converted with a primary purpose of preserving and exhibiting a documented collection of artistic, historic, scientific, or other objects
	  ○ Buildings, associated facilities, fixed facilities, and equipment primarily used for the preservation or exhibition of the collection, including:
	  ➢ Permanent infrastructure, such as walkways and driveways of outdoor museum-type exhibition areas
	  ➢ Historic buildings, such as barns and other outbuildings, intended for the preservation and exhibition of historical artifacts within a defined area
	  ➢ Permanent facilities and equipment that are part of arboretums and botanical gardens
	  ➢ Infrastructure, such as utilities, and administrative facilities necessary for support
	  ○ The grounds at museums and historic sites are ineligible.
	  ○ Open natural areas/features or entities that promote the preservation/conservation of such areas are ineligible.
	• Residential and other services for families of domestic abuse
	• Residential services for individuals with disabilities
	• Senior citizen centers
	• Shelter workshops that create products using the skills of individuals with disabilities
	• Zoos

With exception of custodial care facilities and museums, administrative and support facilities essential to the provision of PNP noncritical service are ineligible facilities.	

3. Private Nonprofit Ineligible Services

Table 3. PNP Ineligible Services

PNP INELIGIBLE SERVICES	
COMMUNITY CENTER SERVICES	OTHER COMMUNITY SERVICES

• Training individuals to pursue the same activities as full-time paying careers (for example, vocational, academic, or professional training)
• Meetings or activities for only a brief period, or at irregular intervals
• Other education or training including:
  ○ Athletic, vocational, academic training, or similar activities
  ○ Political education
	• Advocacy or lobbying groups not directly providing health services
	• Cemeteries
	• Conferences
	• Day care services not included in previous table of eligible services
	• Flood control (e.g., levees, berms, dunes)
	• Land reclamation facilities
	• Irrigation solely for agricultural purposes[97]
	• Job counseling
	• Property owner associations with facilities such as roads, bridges, and recreational facilities (except utilities or emergency facilities)
	• Public housing, other than low-income housing
	• Recreation
	• Parking not in direct support of eligible facility

4. Private Nonprofit Application Documentation Requirements

Table 4. PNP RPA Documentation and Information Requirements

All PNP Applicants
☐ A ruling letter from the Internal Revenue Service that was in effect on the declaration date and granted tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code; OR documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law. If exempt from both the requirement to apply for 501(c)(3) status and tax-exempt status under State law, the organization must provide articles of association, bylaws, or other documents indicating that it is an organized entity and a certification that it is compliant with Internal Revenue Code section 501(c)(3) and State law requirements. (required)
☐ If the Applicant owns the damaged facility, proof of ownership (required)
☐ If the Applicant leases the damaged facility, provide lease or other proof of legal responsibility to repair the incident-related damage (required)
☐ List of services provided in the damaged facility, when, and to whom (required)
Membership Organization
☐ Who is allowed membership (required)
☐ What fees are charged (required)
☐ Policy regarding waiving memberships (required)

[97] 44 C.F.R. § 206.221(e)(3).

Child Care Facility
☐ Proof that the State Department of Children and Family Services, Department of Human Services, or similar agency, recognizes it as a licensed childcare facility (required)
Education
☐ Proof that the school is accredited or recognized by the State Department of Education (required). State regulations for private schools vary and some states do not require accreditation. A PNP school must demonstrate that it is recognized by the state as providing elementary or secondary education. Depending on state requirements, documentation may include, but is not limited to, the following (must have been in existence at the time of the incident): ☐ Accreditation documents ☐ Certification from the State Department of Education that the Applicant operated the facility as a PNP school at the time of the incident ☐ Documentation demonstrating compliance with the State's compulsory attendance laws ☐ School-year calendar ☐ School budget ☐ Complete list of students and teachers ☐ Educational instruction property and equipment owned by the PNP ☐ Tax records for the school ☐ Documents reflecting school curriculum, transcripts, health and safety, disciplinary, or other records kept for students ☐ Tuition receipts ☐ Financial statements ☐ Commencement documents ☐ Inclusion in the U.S. Department of Education's National Center for Education Statistics Private School Universe Survey data[98] ☐ State Department of Education electronic and paper homeschool declaration or registration forms
Mixed-Use Facility (See Chapter 4:II.B.1, *Mixed-Use Facility*)
☐ Proof of the established purpose of the facility with documentation (required), such as: ☐ U.S. Internal Revenue Service documentation; ☐ Pre-incident charter, bylaws, and amendments; or ☐ Evidence of longstanding, routine (day-to-day) use (e.g., a calendar of activities).

Once FEMA approves the RPA, the PAGS in coordination with the PDTFL assigns a Program Delivery Manager (PDMG) to the Applicant (usually within 5 working days of RPA approval). The PDMG serves as the primary point of contact for the Applicant, providing customer service and programmatic guidance throughout phases I through V of the PA Program delivery process.

VII. Exploratory Call

The PDMG conducts the Exploratory Call with the Applicant (usually within 7 working days of Applicant assignment). The Exploratory Call is an introductory discussion conducted by the PDMG via a conference call. The PDMG reviews the Applicant Profile prior to the Exploratory

[98] The Private School Universe Survey electronic search tool is available at nces.ed.gov/surveys/pss/privateschoolsearch/.

Call. The objective for the call is to begin developing a relationship with the Applicant and prepare for the Recovery Scoping Meeting as follows:

- Understand the Applicant's incident impacts by gathering information about the type and level of damage and priority needs for assistance;
- Ensure the Applicant understands the general requirements for a list of impacts;
- Provide key information on documentation, procurement, and EHP requirements; and
- Schedule the Recovery Scoping Meeting and define appropriate attendees.

After the Exploratory Call and prior to the Recovery Scoping Meeting, the Applicant needs to begin compiling its list of impacts to formally document its claim. Chapter 5:I. *List of Impacts*, provides details on how to list the impacts. It is critical that the Applicant work with its PDMG to submit all impact information early in the process to enable efficient and accurate project development. FEMA and the Recipient use this information to deploy the appropriate number and type of resources and need the information as soon as possible to assist Applicants expeditiously.

VIII. Recovery Scoping Meeting

FEMA and the Recipient should conduct the Recovery Scoping Meeting within 21 working days of assigning a PDMG to the Applicant.

While the Applicant Briefing provides high-level information for all potential Applicants, the Recovery Scoping Meeting addresses the specific needs of each eligible Applicant. At the Recovery Scoping Meeting, FEMA, the Recipient, and the Applicant review and refine the list of impacts and discuss:

- PA delivery process;
- Details of the Applicant's impacts from the incident;
- Hazard mitigation opportunities;
- Eligibility criteria for facilities, work and costs;
- Logical grouping of damage;
- Procurement requirements;
- Insurance reductions and requirements;
- EHP compliance requirements;
- Documentation requirements;
- Interagency Recovery Coordination;
- Deadlines; and
- Appeal process.

The Applicant should ensure staff with knowledge of the incident-related damage, emergency activities performed, and related costs attend the meeting (e.g., public works official, finance staff, risk manager).

Additionally, the Applicant and PDMG develop the Project Development Plan, which is a 45 to 60-day plan that includes a schedule of key steps to complete the project application development process. FEMA uses the Project Development Plan to track project application progress. In creating the plan, the PDMG and Applicant discuss:

- Weekly Applicant Status Meeting schedule;
- Site inspection schedule;
- Applicant's role in approving the Damage Descriptions and Dimensions;
- Timeline to gather and submit documentation; and
- Timeline to develop SOWs and cost estimates.

CHAPTER 4: GENERAL WORK AND FACILITY ELIGIBILITY

This chapter provides the general requirements for work to be eligible and provides PA policy on facility eligibility. Although eligibility determinations may occur later in the process, FEMA conducts much of its eligibility evaluation of facilities and work throughout Phase II: *Impacts and Eligibility*.

I. General Work Eligibility

Through the PA Program, FEMA provides grant funding for:

- Emergency protective measures and debris removal (Emergency Work); and
- Permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage (Permanent Work).

If an entity does not comply with all applicable statutes, EOs, regulations, and policies, FEMA may take one of several actions including disallowing all or part of the cost of the project not in compliance.[99]

A. Categories of Work

To facilitate the processing of PA funding, FEMA separates Emergency Work into two categories and Permanent Work into five categories based on general types of facilities. These categories are shown in Figure 6. *Categories of Work*.

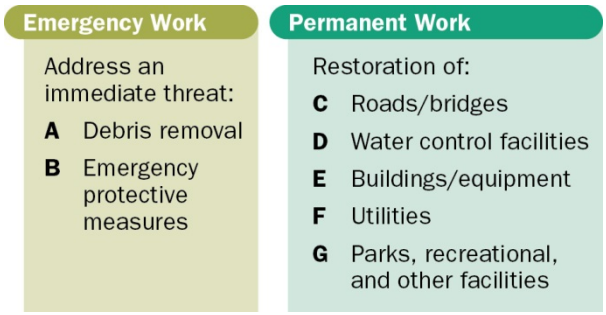


Figure 6. Categories of Work

B. Minimum Work Eligibility Criteria

At a minimum, work must meet each of the following three general criteria to be eligible:

- Be required as a result of the declared incident;
- Be located within the designated area; and
- Be the legal responsibility of an eligible Applicant.[100]

Work eligibility is discussed in detail in Chapters 7. *Emergency Work Eligibility* and 8. *Permanent Work Eligibility*.

1. Result of Declared Incident

The Applicant is responsible for showing that work is required:

- Due to an immediate threat resulting from the declared incident (Emergency Work); or

[99] 2 C.F.R. § 200.338.
[100] 44 C.F.R. § 206.223(a).

- To address damage caused by the declared incident (Permanent Work, temporary repairs, and mold remediation).

The Applicant must demonstrate that the debris causing an immediate threat was generated by the declared incident during the declared incident period.

The Applicant must demonstrate that damage was caused directly by the declared incident. FEMA does not provide PA funding for repair of damage caused by:

- Deterioration;
- Deferred maintenance;
- The Applicant's failure to take measures to protect a facility from further damage; or
- Negligence.[101]

When necessary to validate damage, the Applicant may be required to provide:

- ☐ Pre-incident photographs of the impacted site or facility; and/or
- ☐ Documentation supporting pre-disaster condition of the facility (e.g., facility maintenance records, inspection/safety reports).

If a facility was functioning prior to the disaster and the disaster caused damage that rendered the facility non-functional, the facility may be eligible provided the pre-disaster condition was not a significant contributing factor in the cause of failure.

2. Within Designated Area

To be eligible, the facility must be located, and work must be performed, in the designated area defined in the declaration [except for sheltering, evacuation, and EOC activities]. The sheltering, evacuation and EOC activities must be used for a declared area.[102] Emergency Work or Permanent Work performed on a facility located outside of the designated area is ineligible. This is true even if an eligible Applicant is legally responsible for the work, including work performed outside the designated area to protect a facility within the designated area.

Tribal governments do not always have geographical boundaries, and some have boundaries that cross State lines. Therefore, declarations do not usually define specific designated geographical areas for Tribal governments. For Tribal governments, FEMA determines eligibility based on legal responsibility and whether the work is directly related to the declared incident.

3. Legal Responsibility

To be eligible, work must be the legal responsibility of the Applicant requesting assistance.[103]

To determine legal responsibility for Emergency Work, FEMA evaluates whether the Applicant requesting the assistance either had jurisdiction over the area or the legal authority to conduct the work related to the request at the time of the incident.

To determine legal responsibility for Permanent Work, FEMA evaluates whether the Applicant claiming the costs had legal responsibility for disaster-related restoration of the facility at the time of the incident based on ownership and the terms of any written agreements (such as for facilities under construction, leased facilities, and facilities owned by a Federal agency).

[101] 44 C.F.R. § 206.223(e).
[102] 44 C.F.R. § 206.223(a)(2).
[103] 44 C.F.R. § 206.223(a)(3).

(a) Documentation to Support Legal Responsibility

Documents that support legal responsibility include:

- ☐ Deeds;
- ☐ Titles;
- ☐ Lease agreements (required for leased facilities); and
- ☐ Contract (required for facilities under construction at the time of the incident).

(b) Facility Ownership

When the Applicant requests PA funding to restore a facility, it is the Applicant's responsibility to provide proof that it owns the facility. To determine ownership, FEMA may review deeds, title documents, and local government tax records.

Ownership of a facility is usually sufficient to establish the Applicant's legal responsibility to restore the facility, provided it is not under construction by a contractor or leased to another entity at the time of the incident.

(c) Facilities under Construction

If the facility is under construction by a contractor at the time of the incident, FEMA reviews the contract to determine whether the Applicant is legally responsible for the repair of damage caused by the incident.[104] At a minimum, FEMA evaluates the contract to determine if it:

- Identifies the contractor or owner as being responsible for disaster-related repairs;
- Requires a builder's risk policy for losses that occur while the contractor has control of the facility;
- Has a Force Majeure provision, which is a clause that relieves the contractor from responsibility for damage beyond its reasonable control, such as natural disasters (often referred to "acts of God") or acts of war; or
- Has a provision that identifies the point at which the contractor transfers legal responsibility for the facility, or portions of the facility, back to the owner.

(d) Leased Facilities

The Applicant may own a facility and lease it to a tenant, or the Applicant may lease a facility owned by another party. In either case, FEMA reviews the lease agreement to determine legal responsibility for repair of damage caused by the incident. If the lease does not specify either party as responsible, FEMA considers the owner of the facility legally responsible for the costs to restore the facility.

If the lease is between two eligible Applicants, FEMA provides PA funding to the Applicant legally responsible for the restoration.

(e) Federal Facilities

Facilities owned and maintained by Federal agencies are ineligible. If a Federal agency constructed a facility and formally designated the Applicant as the legally responsible entity for

[104] Stafford Act § 406(e)(2), 42 U.S.C. § 5172.

facility operation, maintenance, and repairs, then the facility may be eligible. FEMA reviews the other Federal agency's authority and agreement between the Federal agency and the Applicant to confirm the legally responsible entity.

(f) Jurisdiction over an Area

In general, the Applicant only has legal responsibility to conduct Emergency Work activities within its jurisdiction. If the Applicant conducts Emergency Work activities outside its jurisdiction, it must demonstrate its legal basis and responsibility to conduct those activities.

(g) Conducting Activities on Private Property

Work on private property is the legal responsibility of the property owner and generally ineligible for PA funding. In rare cases, FEMA may provide PA funding for specific, limited activities. In such cases, at a minimum, the Applicant must have legal authority to conduct the activity. To determine whether a SLTT government has legal authority to conduct activities on private property, FEMA reviews the Applicant's legal basis and specific authority to conduct the activities. See Chapter 7:I.E. Debris Removal from Private Property and 7:II.C. Emergency Protective Measures on Private Property for additional eligibility requirements.

(h) Work Under the Authority of Other Federal Agencies

OFAs have authority to conduct work that may overlap with FEMA's authority. FEMA's authority is broad and most OFA authorities are more specific than FEMA's authorities.

FEMA evaluates its authorities against OFA authorities. Some of the Factors that FEMA considers when evaluating whether an OFA has more specific authority are whether the OFA's authority is specifically and exclusively:

- Available for a particular type of facility, work, or activity;
- Applicable to a Presidential Declaration under the Stafford Act;
- Specific to an incident or type of incident; or
- Delineated under direction by Congress.

In such cases, FEMA does not provide assistance for the facilities or work even if that OFA does not provide funding for the facility or work.[105] This restriction includes any activities or costs related to the work that falls under OFA authorities as the costs are not related to eligible work. The Applicant should apply to the respective agency for assistance with a facility or work under that agency's authority.

C. Environmental and Historic Preservation Requirements

Several statutes, EOs, and regulations establish requirements to protect the environment and preserve the Nation's historic and archaeological resources. FEMA reviews each PA project to ensure the work complies with applicable Federal EHP laws and implementing regulations, and applicable EOs.[106] The Applicant is responsible for complying with applicable Federal, State, Territorial, or Tribal EHP laws even if FEMA is not providing PA funding for all of the work.

[105] 44 C.F.R. § 206.226(a).
[106] 2 C.F.R. § 200.300.

See Appendix A: *Environmental and Historic Preservation Compliance* for a description of frequently encountered EHP statutes, EOs, and regulations.

FEMA provides technical support to Applicants throughout the recovery process to help ensure compliance with all EHP laws, regulations, and EOs, as well as to identify opportunities to incorporate conservation measures in the project area for the protection and preservation of environmental or historic resources.

II. Facility Eligibility

In general, a facility must be determined eligible for work to be eligible. There are exceptions for some emergency work activities as shown in Figure 7. *Facility Eligibility* and discussed in Chapter 7. *Emergency Work Eligibility*.

A facility is a building, system, or equipment, built or manufactured, or an improved and maintained natural feature.[107]

An example of a system that qualifies as a facility is a water distribution system. Mechanical, electrical, plumbing, and other systems that are components of a facility in which they operate are considered part of that facility.

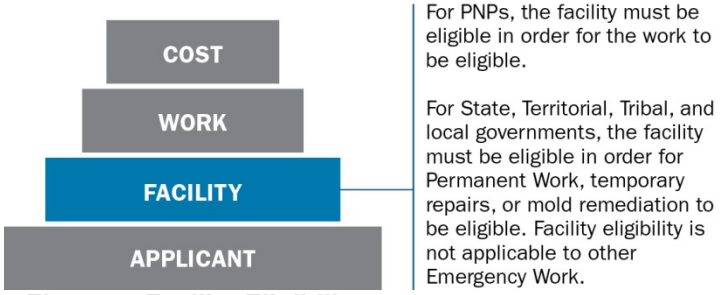


Figure 7. Facility Eligibility

A natural feature is improved and maintained if it meets all of the following conditions:

- The natural feature has a designed and constructed improvement to its natural characteristics, such as a terraced slope or realigned channel;
- The constructed improvement enhances the function of the unimproved natural feature; and
- The Applicant maintains the improvement on a regular schedule to ensure that the improvement performs as designed.

Only the section of a natural feature that meets the criteria above is eligible. For example, if only 150 linear feet of a natural channel bank is armored with rip rap and maintained, the eligible facility would be limited to that 150-linear-foot section.

The following are ineligible facilities:

- Unimproved property (e.g., a hillside or slope, forest, natural channel bank); and
- Land used for agricultural purposes.[108]

[107] 44 C.F.R. § 206.201(c).
[108] Ibid.

A. Public Facility

An eligible public facility is one that a SLTT government owns or has legal responsibility for maintaining, including any:

- Flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility;
- Non-Federal-aid street, road, or highway;
- Other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or
- Park.[109]

When a facility maintained by a Community Development District is not open to the general public or does not provide a service to the general public, the facility is ineligible.

B. Private Nonprofit Facility

An eligible PNP facility is one that provides educational, utility, emergency, medical, or custodial care, including for senior citizens or individuals with disabilities, and other essential social-type services to the general public (see Table 1. *PNP Eligible Critical Services* and Table 2. *PNP Eligible Noncritical, Essential Social Services*).[110]

If a PNP operates multiple facilities, or a single facility composed of more than one building, FEMA must evaluate each building independently, even if all are located on the same grounds. Buildings that are part of a complex that includes outdoor facilities (e.g., swimming pools, athletic fields, or tennis courts) are not evaluated separately from the rest of the complex when determining eligibility of the building. For example, an outdoor pool usually has a building for bathrooms and controlling entry. In such cases, FEMA does not evaluate the building for eligibility separately because it is an intrinsic part of the pool complex.

See Appendix B: *Private Nonprofit Facility Eligibility Examples*, for examples of PNP facilities and corresponding eligibility determinations.

1. Mixed-Use Facility

PNP facilities that provide both eligible and ineligible services are considered mixed-use facilities. Eligibility of mixed-use PNP facilities is dependent on the *primary* use of the facility, which is determined by the amount of physical space dedicated to eligible and ineligible services. "Primary use" is the use for which *more* than 50 percent of the physical space in the facility is dedicated. FEMA evaluates the entire structure when determining primary use; it does not separately address individual areas, such as floors, basements, or wings. Common space, such as bathrooms, hallways, lobbies, closets, stairways, and elevators, is not included when calculating mixed-use space.

If FEMA determines that 50 percent or more of physical space is dedicated to ineligible services, the entire facility is ineligible. If the facility is eligible, FEMA prorates Permanent Work funding based on the percentage of physical space dedicated to eligible services. Depending on the specifics of the scenario, FEMA either prorates Emergency Work funding or limits Emergency

[109] Stafford Act § 102(10), 42 U.S.C. § 5122; 44 C.F.R. § 206.221(h).
[110] Stafford Act § 102(11), 42 U.S.C. § 5122; 44 C.F.R. § 206.221(e).

Work funding to what is eligible, necessary, and reasonable. The Applicant is responsible for the balance of costs to restore the facility and must restore the entire facility to receive funding for repairs to the eligible-use portions of the facility.

Eligible PNP irrigation and eligible PNP public broadcasting facilities are exempt from primary use requirements. However, in consideration of irrigation, FEMA will evaluate whether the facility was designed to provide eligible irrigation and whether it has ever been used for that purpose. If the facility was not designed for an eligible irrigation purpose, and has never been utilized for that purpose, it is not eligible.

(a) Mixed-Use Space

In cases where the same physical space is used for both eligible and ineligible services, the primary use is the use for which more than 50 percent of the operating time is dedicated in that shared physical space. If space is available for use, but the Applicant cannot support that it is used for eligible services for more than 50 of the percent of operating time, this criterion is not met.

If FEMA determines that 50 percent or more of the operating time in the shared physical space is dedicated to ineligible services, then FEMA does not include that physical space when evaluating primary use.

(b) Use by Multiple Entities

In cases where a PNP Applicant shares use of a facility, it is only eligible if the facility is primarily owned by the PNP Applicant and meets the primary use requirement. FEMA prorates funding for these facilities based on the percentage of physical space that the Applicant owns and dedicates to eligible services. The following guidelines are used to determine the eligibility of such facilities:

- If the eligible PNP owns the entire facility and leases a portion of it to another entity, the facility is eligible provided that the PNP dedicates more than 50 percent of the facility for eligible services. If the PNP leases 50 percent or more of the facility to an ineligible Applicant, or for ineligible services, then the facility is ineligible.
- If the eligible PNP only owns a portion of the facility, it is eligible provided that the PNP owns more than 50 percent of the facility and dedicates more than 50 percent of physical space for eligible services.

2. Small Business Administration Loan Requirement

Following a Major Disaster Declaration, the U.S. Small Business Administration (SBA) can provide loans to individuals and businesses for facility restoration. For PNPs with facilities that provide noncritical, essential social services, FEMA only provides PA funding for eligible Permanent Work costs that an SBA loan will not cover for those facilities. Therefore, noncritical PNPs must also apply for a disaster loan from the SBA and receive a determination for Permanent Work on facilities that:[111]

- Provide noncritical services; or

[111] Stafford Act § 406(a)(3)(A)(ii), 42 U.S.C. § 5172; 44 C.F.R. § 206.226(c). For online applications to SBA, The Applicant should visit the SBA website at disasterloan.sba.gov/ela/. For additional assistance with the application process, the Applicant should contact the SBA Disaster Customer Service Center at 1-800-659-2955.

- Are mixed-use facilities and the eligible portion of the facility is used to provide services that are entirely noncritical.

If the PNP misses the SBA application deadline, including any SBA approved extension, the Permanent Work is ineligible for FEMA PA funding. If the PNP declines an SBA loan, PA funding is limited to the costs that the loan would not have otherwise covered. This applies even when the PNP cannot accept the terms of the loan, and SBA therefore denies the loan, which may occur when the entity does not meet a collateral requirement. Possible outcomes are shown in Figure 8. *SBA Loan Outcomes*.

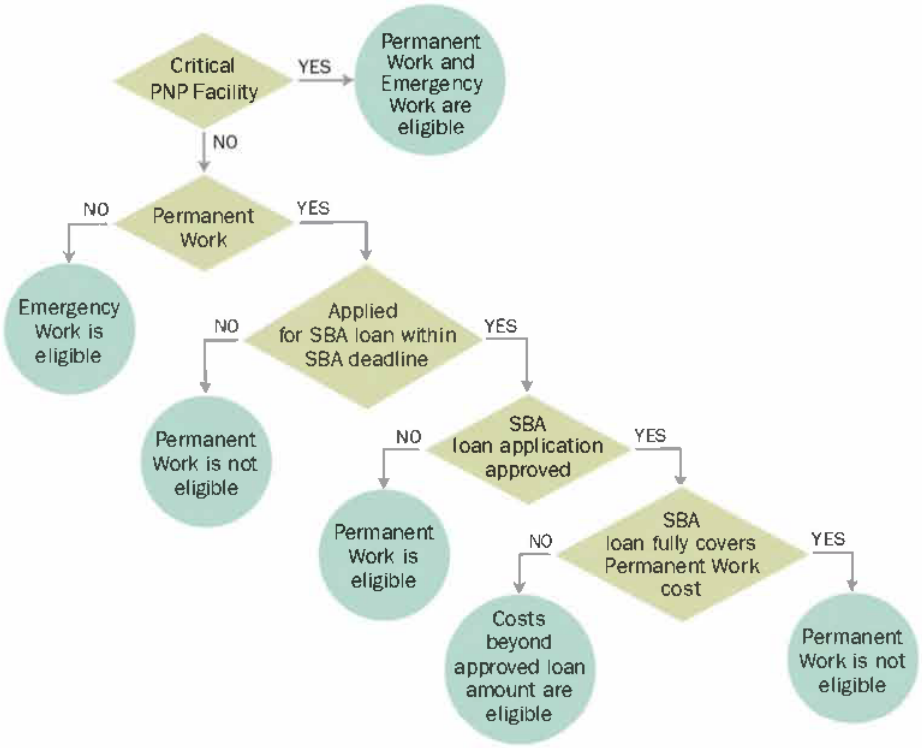


Figure 8. SBA Loan Outcomes

PNPs do not need to apply for a disaster loan from the SBA for facilities that:

- Provide critical services; or
- Are mixed-use and the eligible portion is either entirely or partially used to provide critical services.

C. Inactive or Partially Inactive Facility

To be eligible, a facility must have been in active use at the start of the incident period. Inactive facilities are ineligible, unless one of the following conditions is met:

- The facility was only temporarily inactive for repairs or remodeling (provided a contractor is not responsible for repair of disaster-related damage);
- The Applicant firmly established future active use in an approved budget; or

- The Applicant can clearly demonstrate its intent to begin use within a reasonable amount of time.[112]

The above criteria also apply to facilities that are partially inactive at the start of the incident period. Inactive portions are ineligible unless one of the exceptions noted above applies.

When eligible repairs benefit an area that was not in active use, FEMA prorates funding based on the percentage of the facility that was in active use. For example, if the roof of a partially used building is destroyed, FEMA limits the eligible cost to a prorated amount of the total cost to replace the roof based on the percentage of the building that was in active use.

For PNP mixed-use facilities to be eligible, more than 50 percent of the facility had to be in active use for an eligible purpose at the time of the incident.

D. Facility Scheduled for Repair or Replacement

Facilities that are not yet under contract but are scheduled for repair or replacement using non-Federal funds are eligible provided that the claimed damage did not exist prior to the incident (FEMA may review procurement and contract documents to validate). If damage existed prior to the incident, only the repair of damage caused by the incident is eligible.

A facility scheduled for replacement within 12 months of the start of the incident period using Federal funds is ineligible. In such a case, the Applicant should coordinate with the agency funding the project to expedite replacement, if possible.

[112] 44 C.F.R. § 206.226(k)(2).

CHAPTER 5: DAMAGE AND IMPACT INFORMATION

This chapter provides information on procedures conducted during Phase II, *Impacts and Eligibility*, which include finalizing the list of impacts, logically grouping the impacts and associated damage and work into project applications;[113] conducting site inspections to develop a detailed description of the incident-related damage and dimensions; and collecting project information and documentation.

I. List of Impacts

The Applicant is required to identify and report all of its incident-related impacts to FEMA within 60 days of the Recovery Scoping Meeting.[114] FEMA may extend the deadline to identify and report the impacts if the Applicant submits a request with justification based on extenuating circumstances beyond the Recipient's or Applicant's control.[115] For example, if a site is inaccessible, FEMA may extend the deadline for that site.

The Applicant needs to submit this identification in the form of a list of impacts that includes all facility damage, debris quantities, and emergency protective measures to address immediate threats that the Applicant is claiming for PA funding. The Applicant lists the information by location with a rough estimate of the associated cost. The list does not include detailed descriptions of impacts, damaged components within a facility, or a final estimate of costs.

Each line item in the list needs to include the following:

- ☐ Unique Identifier (e.g., facility name and site) (required);
- ☐ Specific location of debris impacts or facility damage (required);
- ☐ General description of damage, emergency protective measures, or approximate quantities of debris;
- ☐ Approximate cost (required)
- ☐ Status of work; and
- ☐ Project priority level.

Terminology

A **site** is defined as an individual building, structure, location, or system section. Examples include each:

- Individual building or structure inclusive of its contents and supplies
- Beach or park inclusive of equipment and other items within the area that are not structures or buildings, such as benches or playground equipment
- Lift or pump station
- Dam
- Section of roadway that has damage within a reasonable distance throughout that section

[113] 44 C.F.R. § 206.201(l).
[114] 44 C.F.R. § 206.202 (d)(1)(ii).
[115] 44 C.F.R. § 206.202 (f)(2).

II. Grouping Impacts into Projects

This section defines logical grouping of work and damage.[116]

The PDMG works with the Applicant and PDTFL to identify sites and facilities that can be combined into one project. This is a two-step process: 1) Create groups based on categories of work and facility types. 2) Identify sites or facilities that should be formulated into separate projects.

Before grouping work or damage, the PDMG must identify and remove any damaged sites or facilities that are under the authority of another Federal agency. The PDMG must also identify and remove any facilities that were not in use at the time of incident in accordance with Chapter 4:II.C. *Inactive or Partially Inactive Facility*. The Applicant must either withdraw these sites and facilities from its list of impacts or FEMA will issue a Determination Memorandum.

A. Initial Emergency Work Grouping

The bullets below identify emergency work that FEMA usually groups together (each bullet stands for one initial grouping):

- All debris removal from public property (Category A);
- All debris removal from waterways (Category A);
- All debris removal from private residential property (Category A);
- All debris removal from commercial property (Category A);
- All private property demolition (Category B);
- All emergency response activities (except those conducted on private property) (Category B);
- Any emergency protective measures performed on private property (Category B);
- All emergency protective measures that involve facility construction or repairs (Category B);
- Each individual temporary facility (Category B); and
- All donated resources for Emergency Work (Category B).

B. Initial Permanent Work Grouping

The bullets below identify damaged facilities that FEMA considers initially grouping together (each bullet stands for one initial grouping). The list is based on infrastructure categories.

Transportation:

- All roads, bridges, low water crossings, and culverts (Category C);
- All mass transit facilities such as subways and railways (Category G);
- All airports (Category G); and
- All ports and harbors (Category G).

Flood Control:

- All dams and reservoirs (Category D);

[116] 44 C.F.R. § 206.201(k).

- All canals, drainage channels, and aqueducts (Category D);
- All stormwater retention and detention basins (Category D); and
- All coastal shoreline protection facilities (levees, berms, seawalls, sand revetments, etc.) (Category D).

Education:

- All school campuses (Category E).

Housing:

- All public housing campuses (Category E).

Health:

- All hospital campuses (Category E).

Emergency Service Facilities:

- All police, fire, emergency operation centers, prisons, etc. (Category E).

Other Government Facilities:

- All courthouses, administrative buildings, and other non-emergency buildings (Category E).

Energy:

- All power generation facilities and plants - Include all wind turbines, generators, substations, and other facilities within the confines of the plant. (Category F);
- Entire power transmission and distribution system (Category F); and
- Entire natural gas transmission and distribution system (Category F).

Water/Waste-water:

- All water and wastewater treatment plants (Category F);
- Entire water distribution system (Category F);
- Entire wastewater collection system (Category F); and
- Entire irrigation system (Category F).

Communications/Information Technology:

- All communication systems (Category F).

Natural and Cultural Resources:

- All parks, golf courses, and fish hatcheries (Category G);
- All beaches (Category G); and
- All cemeteries (Category G).

FEMA includes ancillary (support) facilities at a site in the same project as the primary facility at that site. Ancillary facilities may include but are not limited to: buildings, outside structures (e.g. maintenance and storage sheds, restroom facilities, bath houses, pumping stations, etc.), communication towers and antennas, contents, supplies, equipment, vehicles, fences, parking

lots, stairs, ramps, access roads, runways, signage, lighting, sidewalks, gutters, ditches, guard rails, integral ground, catch basins, outfall structures, piers, docks, trails, benches, picnic tables, swimming pools, golf courses, ball fields, etc. Any donated resources for Permanent Work must also be included in the Permanent Work Project.

C. Final Grouping

After initially grouping sites and facilities into one project, identify sites or facilities that need to be separated from the initial grouping and formulated into separate projects. Sites or facilities that need to be separated include those that:

- Are anticipated to require extensive EHP reviews. The PDMG works with EHP staff to identify these sites and facilities;
- Are in a Special Flood Hazard Area;
- Need Architectural/Engineering design funding prior to determining SOW and cost;
- Have 100% of the work completed;
- Are complex and require specialized technical support for project formulation, such as significantly damaged waste water treatment plants, dams, hospitals, or schools;
- Have ineligible work;
- Would make a project too unwieldy to review due to the number of sites and facilities combined (consider separating into two projects or creating separate projects based on geographical locations); and/or
- The Applicant and PDTFL agree have specific circumstances that make it illogical to combine.

PNP Applicants should also separate critical service facilities into separate projects from noncritical service facilities so that projects with critical service facilities are not delayed pending the Small Business Administration determination described in Chapter 4:II.B.2. *Small Business Administration Loan Requirement*.

III. Site Inspections and Obtaining Damage Information

FEMA gathers project-specific information by conducting site inspections and obtaining documentation. These activities occur concurrently.

A. Damage Information

FEMA requests information and documentation required to substantiate the eligibility of a project. The Applicant is responsible for providing this information and documentation to support that its facilities, work, and costs are eligible based on the applicable laws, regulations, EOs, and policies. At a minimum, FEMA usually requires the "who, what, when, where, why, and how much" for each item claimed.

The Applicant answers questions for each project, which trigger information and documentation that the Applicant needs to provide. Various documents may provide the information required; therefore, FEMA usually accepts a variety of documentation to substantiate eligibility. If FEMA requires specific information or documentation to support eligibility, FEMA specifies the requirement in checklists throughout the PAPPG; however, these checklists are not all-inclusive lists. FEMA and the Recipient work with the Applicant to evaluate submitted documentation and

determine whether it supports eligibility. If the Applicant does not provide sufficient documentation to support its claim as eligible, FEMA cannot provide PA funding for the work.

B. Site Inspections

Damage information is the foundation of the overall project award (i.e., SOW and cost eligibility are tied to the eligible damage). Therefore, FEMA and the Applicant need to reach agreement on the disaster-related damage description and dimensions, emergency protective measures, and debris impacts before proceeding with SOW development. If there are unresolved issues, FEMA documents the decision in a DM. Applicants should still concur on the portion of the damage that is agreed-upon so that the process can move forward.

FEMA conducts inspections at sites with work to be completed. The purpose of the inspection is to validate, quantify, and document the cause, location, and details of the reported damage and debris impacts. FEMA may also identify EHP issues, project-related conservation opportunities, and PA mitigation opportunities during the site inspection.

To expedite the process, in lieu of FEMA inspections at all sites, the Applicant may submit damage information and documentation for FEMA to review and validate using a sampling methodology. FEMA works with the Recipient and Applicant to determine when sampling and validation is appropriate. Sampling may not be appropriate for some damage sites.

CHAPTER 6: COST ELIGIBILITY

This chapter provides PA policy on cost eligibility. Although costs are the final component evaluated for eligibility, as shown in Figure 9. *Cost Eligibility*, this criterion applies to all costs claimed. Not all costs incurred as a result of the incident are eligible. To be eligible, costs must be:

- Directly tied to the performance of eligible work;
- Adequately documented;[117]
- Reduced by all applicable credits, such as insurance proceeds and salvage values;[118]
- Authorized and not prohibited under Federal or SLTT government laws or regulations;
- Consistent with the Applicant's internal policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the Applicant; and
- Necessary and reasonable to accomplish the work properly and efficiently.[119]

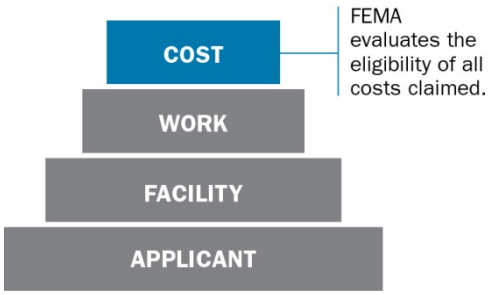


Figure 9. Cost Eligibility

I. Reasonable Costs

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the Applicant makes the decision to incur the cost.[120]

A. Analysis

In conducting a reasonable cost analysis, FEMA performs a preliminary review of the documentation to assess the complexity of the project and expertise required to complete the analysis. If specialized expertise is required, a subject matter expert with the appropriate specialized skills, knowledge, experience, or capability in the appropriate field such as engineering, architecture, or cost estimating conducts the analysis.

FEMA determines reasonableness by evaluating whether the:

- Cost is of a type generally recognized as ordinary and necessary for the type of facility or work.[121] FEMA evaluates the skill level and level of effort necessary to complete the required activity. If the type of employee or skill level is not appropriate for the specific task, FEMA limits PA funding to a rate based on the appropriate employee type or skill level. For complex projects, staff with a higher level of technical proficiency and experience may be appropriate.

[117] 2 C.F.R. § 200.403(g).
[118] Stafford Act § 312, 42 U.S.C. § 5155, and 2 C.F.R. § 200.406.
[119] 2 C.F.R. § 200.403.
[120] 2 C.F.R. § 200.404.
[121] 2 C.F.R. § 200.404(a).

- Applicant participated in ethical business practices, ensuring parties to a transaction are independent of each other, without familial ties or shared interests and on equal footing without one party having control of the other.[122]
- Individuals concerned acted with prudence under the circumstances considering their responsibility to the Applicant, its employees, its students or membership, the public, and the Federal government.[123] If exigent or emergency circumstances existed, FEMA evaluates the length of time the circumstances existed compared to the length of time costs were incurred.
- Applicant deviated from its established practices and policies.[124] FEMA generally considers the Applicant's own labor, equipment, and supply costs reasonable provided the costs are consistent with the entity's policies including, but not limited to, pay rates, labor policies, and cost schedules utilized during its normal operations.
- Applicant complied with procurement requirements (see Chapter 6:VIII. *Procurement and Contracting Requirements*). FEMA generally considers contract costs reasonable when the Applicant adheres to full and open competition under applicable Federal procurement requirements, and the scope of services or work in the contract and level of effort is consistent with respect to the eligible SOW. FEMA evaluates reasonableness when price competition is lacking or when the selection was noncompliant with the applicable procurement under grant requirements even though there may have been price competition.
    - Cost or Price Analysis: The cost or price analysis is one component of documentation that FEMA may review as part of its evaluation of reasonable costs. If the Applicant does not submit a cost or price analysis, FEMA may evaluate the elements that would have been part of such analysis.[125]The Applicant may need to provide this information if it is not included in the documentation submitted.
    - Selection Criteria: FEMA evaluates whether the Applicant selected the lowest responsible bidder based on the selection criteria. If the Applicant selected a contractor with a higher bid than others, it must substantiate its selection based on the selection criteria set forth in its Request for Proposal.
- Cost is comparable to the current market price[126] for similar goods or services in the same geographical area. FEMA makes its determination based on one or more of the following:
    - Historical documentation (previous contracts, invoices, or other documentation).
        - FEMA may compare costs to the Applicant's historical costs for similar SOW or items. FEMA considers inflation and other factors such as code or standard changes, availability of in-kind construction material, quantity, delivery schedules, and the economy. FEMA's Cost Estimating Format (CEF) employs a nationally recognized economic inflation factor. Some types of work may have a different inflation rate than others.

[122] 2 C.F.R. § 200.404(b).
[123] 2 C.F.R. § 200.404(d).
[124] 2 C.F.R. § 200.404(e).
[125] FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200* provides information on how to conduct a cost or price analysis (www.fema.gov/media-library/assets/documents/96773).
[126] 2 C.F.R. § 200.404(c).

  - Average costs in the area.
    - Weighted average unit pricing: FEMA may determine the average costs in the area using weighted average unit prices. These are comprised of the average costs of historical bid tabulations and related specifications from competitive bid pricing solicitations respective to the area and usually includes all factors required to bid public works projects, such as performance bonds, bid bonds, overhead and profit, and general conditions. The Applicant or respective State, Territorial, or regional agency, such as the State's Department of Transportation may provide weighted average unit pricing and related specifications for FEMA's review.
    - Other Applicant's project costs: FEMA may compare the costs with other Applicant's projects of similar SOW and similar circumstances such as event impacts, magnitude, comparable shortages, market factors, and any other unique circumstances that may impact either of the costs.
  - Published unit costs from national cost estimating databases. When using this method, FEMA confirms that the cost publication is current and prepares the estimate using its CEF and the appropriate locality adjustment factor.
    - Industry cost estimating resources: When appropriate local data cannot be developed or obtained, FEMA uses industry standard construction cost estimating resources to prepare an estimate against which to evaluate reasonableness of the Applicant's actual costs. These costing methods include, but may not be limited to, RSMeans, BNi Costbooks, Marshall and Swift, and Sweet's Unit Cost Guide, which are widely accepted in the industry and available for nationwide use.
    - Federal, State, or Territorial unit costs: When industry standard construction cost estimating resources do not provide work items that are appropriate or applicable to the construction activities required to complete the project, FEMA considers local cost data from OFAs or State or Territorial agencies responsible for construction of similar facilities in or near the locality.
    - FEMA Cost Codes: FEMA maintains regional and national unit prices (cost codes). FEMA cost codes may be used when a cost is not found in other published unit costs or if the cost codes are otherwise more applicable than other published costs, such as for force account equipment.
- Following factors or other extenuating circumstances existed and caused escalation in costs:
  - Shortages in equipment, materials, supplies, labor, or contractors. When escalating costs are due to shortages, FEMA considers whether the Applicant's work continued beyond the period of shortages and whether there was an opportunity for the Applicant to obtain more reasonable pricing.
  - Project-specific complexities: Complexities may include environmental or historic issues, remote access or location, provision of a unique service with few providers, or elements requiring an extraordinary level of effort.
  - Economy of Scale: FEMA considers the amount of work that may impact the unit price (for example, smaller projects may have higher rates and larger projects may have lower rates due to various efficiencies that are realized with larger projects. Additionally, when hauling is involved, such as with debris projects, some projects may have longer haul routes due to landfill locations or road blockages).

- Applicant's Justification: When a reasonable cost analysis has been conducted and costs appear high for a project, FEMA reviews the Applicant's justification to determine whether there are any additional factors that justify the higher cost as a reasonable amount.

The Applicant is responsible for providing documentation to demonstrate its claimed costs are reasonable. Documentation may include, but is not limited to:

- ☐ Documentation showing current market price for similar goods or services, such as:
  - Historical documentation;
  - Average costs in the area; or
  - Published unit costs from national cost estimating databases.
- ☐ Documentation supporting necessity of unique services or extraordinary level of effort
- ☐ Documentation supporting shortages, challenging procurement circumstances, and length of time shortages or procurement challenges existed, such as news stories or supply chain vendor reports

Appendix L: *Validation of Applicant-Provided Cost Estimates* includes a checklist that FEMA staff use when evaluating the reasonableness of costs claimed. After completing the evaluation and ensuring that all appropriate costs and factors are included as described above, if FEMA determines any of the costs to be unreasonable based on its evaluation, FEMA may disallow all or part of the costs by adjusting eligible funding to an amount it determines to be reasonable. When determining the reasonable amount, FEMA may use the least-cost alternative, the lowest bid received by the Applicant, or the pricing of another Applicant's properly procured and selected contractor.

II. Applicant (Force Account) Labor

FEMA refers to the Applicant's personnel as "force account." FEMA reimburses force account labor based on actual hourly rates plus the cost of the employee's actual fringe benefits. FEMA calculates the fringe benefit cost based on a percentage of the hourly pay rate. Because certain items in a benefit package are not dependent on hours worked (e.g., health insurance), the percentage for overtime is usually different than the percentage for straight-time. Fringe benefits may include:

- Holiday leave;
- Accrued vacation leave;
- Sick leave;
- Social security matching;
- Medicare matching;
- Unemployment insurance;
- Workers compensation;
- Retirement;
- Health insurance;
- Life and disability insurance; and/or
- Administrative leave.

The Applicant needs to submit the following to support labor costs claimed (not an all-inclusive list):

- ☐ Summary of actual costs for completed work (required)
- ☐ For each individual:
  - Name (required);
  - Job title and function (required);
  - Type of employee (i.e., full-time exempt, full-time non-exempt, part-time, temporary, etc.) (required);
  - Days and hours worked (required);
  - Pay rates and fringe benefit rate (required); and
  - Description of work performed (required) with representative sample of daily logs/activity reports, if available
- ☐ Timesheets (representative sample required when requested)
- ☐ Fringe benefit calculations (required)
- ☐ Pay policy (required)

A. Labor Policies

FEMA determines the eligibility of overtime, premium pay, and compensatory time costs based on the Applicant's pre-disaster written labor policy, provided the policy:

- Does not include a contingency clause that payment is subject to Federal funding;
- Is applied uniformly regardless of a Presidential declaration; and
- Has set non-discretionary criteria for when the Applicant activates various pay types.

If these requirements are not met, FEMA limits PA funding to the Applicant's non-discretionary, uniformly applied pay rates.

All costs must be reasonable and equitable for the type of work being performed.

FEMA determines whether the number of hours claimed are reasonable and necessary by evaluating:

- The severity of the incident;
- Whether the work was performed at a time when it was necessary to work extraordinary hours based on the circumstances of the incident;
- The function of the employee for which the hours are claimed; and
- The number of consecutive hours the employee worked.

B. Eligibility Criteria Based on Type of Employee and Work Performed

FEMA's criteria for reimbursing straight-time labor costs differ depending on the type of employee and whether that employee is performing Emergency Work or Permanent Work.

For Permanent Work, both straight-time and overtime labor costs are eligible for both budgeted and unbudgeted employee hours.[127] For Emergency Work, only overtime labor is eligible for budgeted employee hours.[128] For unbudgeted employees performing Emergency Work, both

[127] Stafford Act § 406(a)(2)(C), 42 U.S.C. § 5172; 44 C.F.R. § 206.228(a)(2)(i).
[128] 44 C.F.R. § 206.228(a)(2)(iii).

straight-time and overtime labor are eligible. Table 5. *Emergency Work Labor Eligibility*, indicates different types of budgeted and unbudgeted employees. Overtime is time worked beyond an employee's scheduled working hours as defined by the Applicant's pre-disaster pay policy.

Under the Alternative Procedures authorized by Section 428 of the Stafford Act, straight-time labor costs are eligible for budgeted employees conducting eligible debris removal (Category A) activities.

Table 5. Emergency Work Labor Eligibility

Emergency Work Labor Eligibility		
Budgeted Employee Hours	**Overtime**	**Straight-Time**
Permanent employee	☑	
Part-time or seasonal employee working during normal hours or season of employment	☑	
Unbudgeted Employee Hours	**Overtime**	**Straight-Time**
Reassigned employee funded from external source	☑	☑
Essential employee called back from furlough	☑	☑
Temporary employee hired to perform eligible work	☑	☑
Part-time or seasonal employee working outside normal hours or season of employment	☑	☑

1. Reassigned Employees

The Applicant may assign an employee to perform work that is not part of the employee's normal job. For example, a police officer may clear debris. FEMA provides PA funding based on the reassigned employee's normal pay rate, not the pay level appropriate to the work, because the Applicant's incurred cost is the employee's normal pay rate.

2. Reassigned Employees Funded from an External Source

Straight-time of a permanent employee funded from an external source (such as a grant from a Federal agency or statutorily dedicated funds) is eligible if the employee is reassigned to perform eligible Emergency Work that the external source does not fund. FEMA must confirm that no duplication of funding exists prior to approval.

3. Backfill Employees

The Applicant may need to temporarily replace an employee who is responding to the incident. Overtime costs for the backfill employee are eligible even if the backfill employee is not performing eligible work as long as the employee that he/she is replacing is performing eligible Emergency Work.

FEMA also provides PA funding for straight-time if the backfill employee is a:

- Contracted or temporary employee; or
- Permanent employee called in on a normally scheduled day off (weekend or other off day).

If the backfill employee is called in from scheduled leave, only overtime is eligible.

4. Essential Employees Called Back from Furlough

Straight-time of essential employees called back to work from a budget-related furlough due to the declared incident is eligible if the costs are not budgeted.

5. Supervisors

Second-level supervisors and above (e.g., commissioners, mayors, department directors, police and fire chiefs) are usually exempt employees.[129] Therefore, overtime costs related to these types of employees are ineligible, unless the Applicant:

- Demonstrates that the employee was directly involved with a specific project;
- Normally charges that individual's time to specific projects regardless of Federal funding; and
- Incurs overtime costs for the employee in accordance with a labor policy that meets the criteria in Chapter 6:II.A. *Labor Policies*.

6. Other

Extraordinary costs (such as call-back pay, night-time and weekend differential pay, and hazardous duty pay) for essential employees who are called back to duty during administrative leave to perform eligible Emergency Work are eligible if costs are paid in accordance with a labor policy that meets the criteria above.

Administrative leave or similar labor costs incurred for employees sent home or told not to report due to emergency conditions are ineligible.

7. Standby Time

FEMA may provide PA funding for labor costs related to intermittent standby time for staff conducting eligible evacuation or sheltering, search and rescue, or emergency medical care. All of the following criteria must be met:

- Standby use and pay are consistent with the Applicant's labor policy (or contractual obligation based on a labor agreement) and consistent with its practice in non-federally declared incidents;
- The standby time occurred when it was necessary to have resources available to conduct the respective life-saving action;
- The number of hours and individuals were reasonable and necessary based on the number of resources required;
- The employee was conducting the respective life-saving action; and
- All other labor cost eligibility criteria were met.

Examples of when FEMA may reimburse labor costs for standby time include, but are not limited to:

- When bus drivers are deployed to transport evacuees;
- When first responders are deployed for the purpose of evacuating or providing emergency medical care to survivors in order to save lives; and
- When a contract or union agreement requires payment for standby time.

[129] These employees are exempt from the overtime pay requirements set forth in the Fair Labor Standards Act.

Additionally, the Applicant may be required to pay firefighter costs from portal-to-portal, which may result in paying for 24-hour shifts with periods of rest. FEMA will reimburse costs based on such requirements. In these instances, FEMA limits its reimbursement to costs and timeframes that are reasonable and necessary, not to exceed 14 calendar days from the start of the incident period. The Applicant must provide the data that led to its decisions and actions.

Standby time is separate and distinct from pre-positioning resources, which is addressed in Chapter 7:II.E. *Pre-positioning Resources*.

III. Applicant-Owned and Purchased Equipment

FEMA provides PA funding for the use of Applicant-owned (force account) equipment, including permanently mounted generators, based on hourly rates.[130] FEMA may provide PA funding based on mileage for vehicles, if the mileage is documented and is less costly than hourly rates.

There are instances when the Applicant does not have sufficient equipment to effectively respond to an incident. If the Applicant purchases equipment that it justifiably needs to respond effectively to the incident, FEMA provides PA funding for both the purchase price and either:

- The use of the equipment based on equipment rates (without the ownership and depreciation components); or
- The actual fuel and maintenance costs.

FEMA only applies equipment rates to the time the Applicant is actually operating equipment. Although costs associated with transporting equipment (e.g., labor and equipment costs used to transport equipment) to an eligible site are eligible, costs for standby time (time spent on hold or in reserve) are ineligible unless the equipment operator uses the equipment intermittently for more than half of the working hours for a given day. In this case the intermittent standby time is eligible.

The Applicant should submit the following to support Applicant-owned or purchased equipment costs claimed (not an all-inclusive list):

For each piece of equipment:

- ☐ Type of equipment and attachments used, including year, make, and model (required);
- ☐ Size/capacity (e.g., horsepower, wattage) (required);
- ☐ Locations and days and hours used (required) should include usage logs
- ☐ Operator name (required when requested); and
- ☐ Schedule of rates, including rate components (required if not using FEMA rates)

Purchased Equipment:

- ☐ Invoices or receipts (required); and
- ☐ Locations and days and hours used (required)

[130] 44 C.F.R. § 206.228(a)(1).

FEMA provides PA funding for force account equipment usage based on FEMA or SLTT equipment rates in accordance with the specific criteria noted below.

A. FEMA Rates

FEMA publishes equipment rates applicable on a national basis.[131] FEMA's rate schedule includes any item powered by fuel or attached to any item powered by fuel. FEMA develops equipment rates based on all costs associated with ownership and operation of equipment (except for operator labor). FEMA equipment rate components include depreciation, overhead, equipment overhaul (labor, parts, and supplies), maintenance (labor, parts, and supplies), lubrication, tires, ground engaging component (if applicable), and fuel. Because the rates include maintenance costs, a mechanic's labor costs to maintain Applicant-owned equipment are ineligible.

B. State, Territorial, or Tribal Rates

State, Territorial, or Tribal rates are those established under State, Territorial, or Tribal guidelines for use in normal day-to-day operations. FEMA provides PA funding based on State, Territorial, or Tribal rates up to $75 per hour.[132] FEMA only provides PA funding for a rate above $75 per hour if the Applicant demonstrates that each of the components of the rate is comparable to current market prices.[133]

C. Local Rates

Local rates are those developed under local government guidelines for use in normal day-to-day operations. FEMA generally provides PA funding for equipment usage based on the lower of either the local rate or the FEMA rate. However, if the local rate is lower, but it does not reflect all of the costs associated with operating the equipment, FEMA may provide PA funding based on the higher FEMA rate. Additionally, if the local rate is higher, the Applicant must document the basis for that rate and obtain approval from FEMA for the higher rate.[134]

If determining the lowest rate for each piece of equipment is overly burdensome because of the number of different types of equipment used, or if the Applicant prefers, FEMA will reimburse all equipment use based on the lower of the two rate schedules, rather than based on a comparison of each individual rate. In these cases, the PA Division at FEMA Headquarters determines which schedule of rates is lower.

D. Equipment with No Established Rate

If the Applicant uses equipment that has no established SLTT rate, FEMA reimburses that equipment based on the FEMA rate.[135] If FEMA does not have a rate established for the equipment, the Applicant may either submit a rate for approval or request that FEMA provide a rate. If the Applicant submits a rate, it must include documentation demonstrating that each component of the rate is comparable to current market prices. The rate cannot be based on rental

[131] www.fema.gov/schedule-equipment-rates.
[132] 44 C.F.R. § 206.228(a)(1)(i).
[133] Per 44 C.F.R. § 206.228(a)(1)(i), reimbursement of rates in excess of $75 is determined on a case-by-case basis by FEMA. FEMA evaluates the rate for approval based on current market prices.
[134] Ibid.
[135] 44 C.F.R. § 206.228(a)(1)(iii).

rates as such rates include cost components, such as profit, that are above and beyond what is necessary to operate and maintain force account equipment.

IV. Leased Equipment

When the Applicant leases equipment, FEMA provides PA funding based on the terms of the lease. Leasing costs are eligible if:

- The Applicant performed an analysis of the cost of leasing versus purchasing the equipment;[136] and
- The total leasing costs do not exceed the cost of purchasing and maintaining equipment during the life of the eligible project.

If the leasing costs exceed the cost of purchasing and maintaining the equipment, FEMA determines the amount of eligible costs based on an evaluation of the reasonableness of the costs claimed, including whether the Applicant acted with prudence under the circumstances at the time it leased the equipment.

If the Applicant has a lease-purchase agreement and obtains ownership during completion of eligible work, FEMA provides PA funding for the equipment use based on the hourly equipment rate, as described in Chapter 6:III. *Applicant-Owned Equipment and Purchased Equipment*.

If the Applicant has a lease-purchase agreement and completes the eligible work prior to obtaining ownership, FEMA provides PA funding based on the cost to lease the equipment.

The Applicant needs to submit the following to support leased equipment costs claimed (not an all-inclusive list):

- ☐ Lease agreements (required);
- ☐ Invoices or receipts (required);
- ☐ Locations and days used (required);
- ☐ Hours used (required if lease agreement charges hourly rates); and
- ☐ Amount of fuel used, if not included in rental cost (required)

V. Supplies

The cost of supplies, including materials, is eligible if:

- Purchased and justifiably needed to effectively respond to and/or recover from the incident; or
- Taken from the Applicant's stock and used for the incident.

The Applicant must track items taken from stock with inventory withdrawal and usage records.

FEMA provides PA funding for these items based on invoices, if available. If invoices are not available for items used from stock, FEMA provides PA funding based on the Applicant's established method of pricing inventory.[137] If the Applicant does not have an established method, FEMA provides PA funding based on historical data or prices from area vendors.

[136] 2 C.F.R. § 200.318(d).
[137] 2 C.F.R. § 200.453(b).

FEMA consults with the U.S. Department of Homeland Security Office of Inspector General Emergency Management Oversight Team in cases where it has difficulty determining a reasonable value.

The Applicant must submit the following to support costs claimed for supplies (not an all-inclusive list):

Supplies from Stock:

- ☐ Cost documentation such as original invoices or other historical cost records (required);
- ☐ Inventory records (required);
- ☐ Type of supplies and quantities used (required – should include support documentation such as daily logs); and
- ☐ Location used (required)

Purchased Supplies:

- ☐ Receipts or invoices (required);
- ☐ Quantities used (required); and
- ☐ Justification (required if supplies were not used)

VI. Disposition of Purchased Equipment and Supplies

The discussion below describes disposition requirements when purchased equipment or supplies (including materials) are no longer needed for federally funded projects.

In the context of disposition, equipment is any tangible personal property (including information technology systems) having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the Applicant for financial statement purposes, or $5,000.[138] Tangible personal property that does not fall under this definition of equipment is a supply.[139]

Terminology

Personal property means property other than real property.

Real property means land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.

A. Disposition of Purchased Equipment

In accordance with Federal regulations, State and Territorial government Applicants dispose of equipment in accordance with State and Territorial laws and procedures.[140]

When equipment purchased with PA funding are no longer needed for response to or recovery from the incident, Tribal and local governments and PNP Applicants may use the items for other federally funded programs or projects.[141]

[138] 2 C.F.R. § 200.33.
[139] 2 C.F.R. § 200.94.
[140] 2 C.F.R. § 200.313(b).
[141] 2 C.F.R. § 200.313(c).

When an individual item of equipment is no long needed for federally funded programs or projects, Tribal and local governments and PNP Applicants must calculate the current fair market value of the individual item of equipment. The Applicant must provide the current fair market for items that have a current fair market value of $5,000 or more. FEMA reduces eligible funding by this amount.[142] If the individual item of equipment has a current fair market value less than $5,000, FEMA does not reduce the eligible funding.[143]

Terminology

Fair market value is either the selling price or the advertised price for a similar item in a competitive market.

Tribal and local governments and PNP Applicants must comply with all disposition requirements described in 2 C.F.R. 200.313(e), *Disposition*.

B. Disposition of Purchased Supplies

When supplies are no long needed for federally funded programs or projects, all Applicants, including State and Territorial government Applicants, must calculate the current fair market value of any unused residual supplies (including materials) that FEMA funded for any of its projects and determine the aggregate total.

The Applicant must provide the current fair market value if the aggregate total of unused residual supplies is greater than $5,000. FEMA reduces eligible funding by this amount.[144] If the aggregate total of unused residual supplies is less than $5,000, FEMA does not reduce the eligible funding.

VII. Disposition of Real Property

If the Applicant acquires or improves real property with PA funds, disposition and reporting requirements apply when acquired or improved real property is no longer needed for the originally authorized purpose.[145] The PA Division at FEMA Headquarters provides disposition instructions.[146]

VIII. Procurement and Contracting Requirements

FEMA provides PA funding for contract costs based on the terms of the contract if the Applicant meets Federal procurement and contracting requirements. Federal procurement and contracting requirements for State and Territorial government agencies are different than those for Tribal and local government agencies and PNPs. This section provides information on Federal procurement and contracting requirements.

FEMA PA staff coordinate with FEMA's Office of Chief Counsel when evaluating whether the Applicant complied with Federal procurement requirements. In the case of noncompliance, FEMA applies an appropriate remedy in accordance with its authorities.[147] FEMA has determined an appropriate remedy under these circumstances is to either deny all costs

[142] 2 C.F.R. § 200.313(e)(2).
[143] 2 C.F.R. § 200.313(e)(1).
[144] 2 C.F.R. § 200.314(a).
[145] 2 C.F.R. §§ 200.311 and 200.329.
[146] 2 C.F.R. § 200.311(c). Recipients and Applicants must obtain specific disposition instructions from FEMA.
[147] 2 C.F.R. § 200.338.

associated with the contract or, if sufficient information is provided to substantiate a reasonable amount for the eligible work completed, FEMA may reimburse the portion of the costs it determines are reasonable and allowable based on all available information and documentation provided. In addition to monetary remedies, FEMA may also take non-monetary actions against the Applicant as authorized by 2 C.F.R. §§ 200.207 and 200.338.

FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)* provides additional details regarding Federal procurement and contracting requirements.[148]

A. Procurement and Contracting Requirements for State and Territorial Government Entities

Applicants must comply with Federal procurement requirements as a condition of receiving PA funding for contract costs for eligible work.

1. Procurement

State and Territorial government Applicants[149] must comply with Federal procurement procedures at 2 C.F.R. § 200.317, which include:

- Following the same policies and procedures they would use for procurements with non-Federal funds; and
- Complying with the Environmental Protection Agency (EPA) guidelines in 2 C.F.R. § 200.322, Procurement of recovered materials.

FEMA does not typically review State or Territorial procurement policies or procedures. In certain circumstances, FEMA may review State or Territorial procurement policies or procedures or request that a State or Territorial attorney certify in writing whether the Applicant complied with the State's or Territorial's procurement policies and procedures.

2. Contracting

State and Territorial government Applicants must include required provisions detailed in 2 C.F.R. § 200.326 in all contracts awarded.[150] Some provisions are based on sound contracting practices while others are required by Federal law, EO, and regulations. Some provisions do not apply under the PA Program (e.g. Davis Bacon Act[151] and Rights to Inventions Clause) while others require verbatim language.

Although time and material (T&M) contracts without a ceiling price and cost-plus-percentage-of-cost or percentage-of-construction contracts may be allowed under State or Territorial government standards, the use of these contracts has a high risk of noncompliance with the requirement that all costs be reasonable.[152]

[148] www.fema.gov/media-library/assets/documents/96773.
[149] See Chapter 3:VI.A. *State and Territorial Governments* for a description of which Applicants are State or Territorial government entities.
[150] 2 C.F.R. § 200.326.
[151] The Davis Bacon Act requires "prevailing wage" payment to contracted workers based on the local union wage scale defined by the U.S. Department of Labors. If the Applicant incorporates prevailing wage rates as part of its normal practice for all contracts regardless of the funding source, then those rates are eligible.
[152] 2 C.F.R. § 200.403(a).

B. Procurement and Contracting Requirements for Tribal and Local Government Agencies and Private Nonprofits

Tribal and local governments, including Tribal Recipients, and PNPs[153] must comply with:

- Their own documented procurement procedures;
- Applicable SLTT government laws and regulations; and
- Applicable Federal laws and regulations.[154]

If a Federal requirement is different than the SLTT requirement, or the Applicant's own requirements, it must use the more restrictive requirement. Additionally, Territorial governments should consult their legal counsel when a project involves a public building or public works facility as the Buy American Act may apply to the procurement process.

1. Pre-procurement Considerations

Tribal and local governments and PNPs must:

- Establish or update written procurement procedures that reflect applicable SLTT laws and regulations;[155] and
- Maintain required written standards of conduct covering conflicts of interest and governing the performance of employees who engage in the selection, award, and administration of contracts.[156]

Tribal and local governments and PNPs should also create a prequalified list of responsible contractors identified to possess the qualifications and technical abilities to satisfy the Applicant's potential requirement.[157] Although not a contract, many entities have prequalified lists that serve as contract research.

A prequalified contractor is one that the Applicant evaluated and determined to be qualified to perform the work based on capabilities, such as technical and management skills, prior experience, past performance, and availability. A prequalified contractor is not entitled to a "standby" contract. The Applicant must still conduct full and open competition. The Applicant cannot exclude potential bidders or offerors from qualifying during the solicitation period, even if they were not on the prequalified list.

2. General Federal Procurement Requirements

Federal procurement requirements for Tribal and local governments and PNPs are found at 2 C.F.R. § 200.318 through 200.326. The requirements include, but are not limited to:

- Providing full and open competition[158] (Tribal government Applicants may provide preference to Indian organizations or Indian-owned economic enterprises[159] if the

[153] See Chapter 3:VI. *Applicant Eligibility* for a description of which Applicants are Tribal or local governments or PNPs.
[154] 2 C.F.R. § 200.318(a).
[155] Ibid.
[156] 2 C.F.R. § 200.318(c)(1).
[157] 2 C.F.R. § 200.319(d).
[158] 2 C.F.R. § 200.319(a).
[159] Per the Indian Financing Act of 1974, Pub. L. No. 93-262, § 2(e), 88 Stat 77 (codified as amended at 25 U.S.C. § 1452(f)), an Indian organization is the governing body of any federally recognized Tribe or an entity established or

Applicant substantiates that it met the Indian Self-Determination and Education Act requirements).

- Conducting the following steps to ensure the use of small and minority businesses, women's business enterprises, and labor surplus area firms when possible:[160]
    - Place such organizations that are qualified on solicitation lists;
    - Ensure such organizations are solicited whenever they are potential sources;
    - Divide total requirements, when economically feasible, into smaller tasks or quantities;
    - Establish delivery schedules, where the requirement permits, which encourage their participation;
    - Use the services and assistance, as appropriate, of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
    - Require prime contractor to conduct the above steps if subcontracting.

  Note that Tribal government Applicants using the Indian Self-Determination and Education Assistance Act preference do not need to separately follow the six socioeconomic steps outlined above.
- Performing a cost or price analysis in connection with every procurement action above the simplified acquisition threshold,[161] including contract modifications. The Applicant must make independent estimates before receiving bids or proposals.[162] Additionally, the Applicant must negotiate profit as a separate element of the price when it performs a cost analysis and for each contract in which there is no price competition.[163]
- Evaluating and documenting the contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources.[164]
- Ensuring that the contractor was not suspended or debarred.[165]
- Prohibiting the use of statutorily or administratively imposed SLTT geographic preferences in evaluating bids or proposals except where expressly encouraged by applicable Federal law.[166]
- Excluding contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements to ensure objective contractor performance and eliminate unfair competitive advantage.[167]

recognized by the governing body. An Indian-owned economic enterprise is any commercial, industrial, or business activity established or organized by a member of a Federal recognized Tribe for the purpose of profit, provided that such Indian ownership constitutes 51 percent or more of the enterprise.

[160] 2 C.F.R. § 200.321.

[161] The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. § 2.101. The threshold is adjusted periodically for inflation.

[162] 2 C.F.R. § 200.323(a).

[163] 2 C.F.R. § 200.323(b).

[164] 2 C.F.R. § 200.318(h).

[165] 2 C.F.R. § 200.213.

[166] 2 C.F.R. § 200.319(b).

[167] 2 C.F.R. § 200.319(a).

- Maintaining records to detail the history of the procurement including, but are not limited to:
  - Rationale for the method of procurement;
  - Selection of contract type;
  - Contractor selection or rejection; and
  - The basis for the contract price.[168]

3. Procurement Methods

Tribal and local governments and PNPs must use one of the following procurement methods:[169]

- Micro-purchase;
- Small purchase procedure;
- Sealed bid (formal advertising);
- Competitive proposal; or
- Noncompetitive proposal (sole-sourcing).

Terminology: Procurement Methods

Micro-purchase: purchase of supplies or services where the total cost does not exceed the micro-purchase threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1.
Small purchase procedure: relatively simple and informal procurement method for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1.
Sealed bid: publicly solicited bid awarded via a firm fixed price contract to the lowest responsive and responsible bidder.
Competitive proposal: normally conducted with more than one source submitting an offer and generally used when conditions are not appropriate for the use of sealed bids.
Noncompetitive proposal: solicitation of a proposal from only one source.

See 2 C.F.R. § 200.320 for Federal rules that apply to each individual method.

(a) Noncompetitive Procurement

FEMA may reimburse costs incurred under a contract procured through a noncompetitive proposal, also referred to as sole-source, only when one or more of the following circumstances apply:

- The item is only available from one source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (this exception to competitive procurement is only for work specifically related to the circumstance and only while the circumstances exists. Therefore, Applicants need to immediately begin the process of competitively procuring similar goods and services and transition to a competitively procured contract as soon as the circumstances cease to exist);
- FEMA or the Recipient expressly authorizes a noncompetitive proposal in response to a written request from the Applicant; or
- After solicitation of several sources, competition is determined inadequate.[170]

Terminology

Exigency: The existence of a need to avoid, prevent or alleviate serious harm or injury, financial or otherwise, to the Applicant.
Emergency: The existence of a threat to life, public health or safety, or improved property requiring immediate action to alleviate the threat.

[168] 2 C.F.R. § 200.318(i).
[169] 2 C.F.R. § 200.320.
[170] 2 C.F.R. § 200.320(f).

For each noncompetitive procurement, the Applicant must identify which of the four circumstances listed above apply and provide all of the following information, documentation, and justification:

- ☐ A brief description of the product or service being procured, including the expected amount of the procurement;
- ☐ Explanation of why a noncompetitive procurement is necessary. If there was a public exigency or emergency, the justification should explain the specific conditions and circumstances that clearly illustrate why competitive procurement would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency);
- ☐ Length of time the noncompetitive contract will be used for the defined SOW, and the impact on that SOW should the noncompetitively procured contract not be available for that amount of time (e.g., how long does the Applicant anticipate the exigency or emergency circumstances to continue; how long it will take to identify requirements and award a contract that complies with all procurement requirements; or how long it would take another contractor to reach the same level of competence);
- ☐ The specific steps taken to determine that the Applicant could not have used, or did not use, full and open competition for the SOW (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions);
- ☐ Any known conflicts of interest and any efforts that the Applicant made to identify potential conflicts of interest before the noncompetitive procurement occurred. If the Applicant made no efforts, explain why; and
- ☐ Any other justification.

Procurement of Real Property

The purchase or lease of real property is a unique transaction that might not readily allow use of one of the competitive methods of procurement. If the Applicant is unable to conduct a competitive procurement, it may use a noncompetitive method in accordance with the requirements in this section. The appropriate method will depend on the facts and circumstances of each procurement.

Example of an Exigent Situation

A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with State and local law—wants to sole source with a contractor it has contracted with previously.

Example of an Emergency Situation

Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving majority of the jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns.

If FEMA determines that none of the allowable circumstances existed or did not preclude the Applicant from adhering to competitive procurement requirements, FEMA may disallow all or part of the associated costs.[171]

4. Contract Types

FEMA reimburses costs incurred by Tribal and local governments and PNPs using three types of contract payment obligations: fixed price, cost-reimbursement, and, to a limited extent, T&M. The specific contract types related to each of these are described in FEMA's *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules)*.[172]

Tribal and local governments and PNPs must maintain oversight on all contracts to ensure contractors perform according to the conditions and specifications of the contract and any purchase orders.[173]

(a) Time and Material Contracts

T&M contracts do not provide incentives to the contractor for cost control or labor efficiency. Therefore, use of T&M contracts are only allowed if all of the following apply:

- No other contract type was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The Applicant maintains a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.[174]

[171] 2 C.F.R. § 200.338.
[172] www.fema.gov/media-library/assets/documents/96773.
[173] 2 C.F.R. § 200.318(b).
[174] 2 C.F.R. § 200.318(j).

FEMA generally limits the use of T&M contracts to a reasonable timeframe based on the circumstances during which the Applicant could not define a clear SOW. Therefore, the Applicant should define the SOW as soon as possible to enable procurement of a more acceptable type of contract.

Some entities, such as Rural Electrical Cooperatives, provide the materials necessary to restore the facilities and refer to such contracts as Time and Equipment (T&E) contracts. The limitations and requirements that apply to T&M contracts also apply to T&E contracts.

(b) Cost-Plus-Percentage-of-Cost or Percentage-of-Construction

In addition to limiting reimbursement to costs that can be determined to be reasonable, FEMA does not reimburse the increased cost associated with the percentage on a cost-plus-percentage-of-cost calculation or percentage-of-construction cost method.[175] This type of contract billing is prohibited as it does not provide incentive to contractors to control costs because the contractor's profit increases as the costs of performance increase. Instead, it provides a financial interest to the contractor to increase costs so that its profit increases. FEMA identifies these cost methods by determining whether:

- Payment is on a predetermined percentage rate;
- The predetermined percentage rate is applied to actual performance costs;
- The contractor's total payment amount is uncertain at the time of contracting; and
- The contractor's payment increases commensurately with increased performance costs.[176]

5. Additional Contracting Considerations

(a) Pre-Positioned Contracts

Some Applicants have pre-positioned contracts, which are contracts awarded before an incident occurs for the potential performance of work. These contracts are also referred to as advance or standby contracts. FEMA may reimburse reasonable costs under a pre-positioned contract if:

- It was originally procured in compliance with Federal procurement requirements;
- The scope of work was adequate to cover the work performed;
- The work performed was eligible; and
- The contract term covers time when work was performed.

(b) Cooperative Purchasing

A cooperative purchasing program is a cooperative arrangement for acquiring goods or services that involves aggregating the demand of two or more entities to obtain a more economical purchase.[177] Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then purchases the goods or

[175] 2 C.F.R. § 200.323(d).
[176] *See Federation Aviation Administration -Request for Advance Decision*, 58 Comp.Gen. 654, 655 (1979), 79-2 CPD 34; *Marketing Consultants International Limited*, 55 Comp.Gen. 554, 562 (1975), 75-2 CPD 384.
[177] Cooperative purchasing programs are distinguishable from joint procurements. A joint procurement is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor for the delivery of goods or services. Joint procurements must still comply with Federal procurement requirements. However, FEMA sees fewer compliance issues with joint procurements.

services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the pre-negotiated rates or prices. FEMA advises against the use of cooperative purchasing programs due to frequent compliance issues with Federal procurement requirements. Appendix D: *Frequent Compliance Issues with Cooperative Purchasing Programs* provides a list of frequent compliance issues with cooperative purchasing programs for procurements above the simplified acquisition threshold. Applicants must document and explain how its use of the program complied with all procurement requirements.

Piggyback contracting is a type of cooperative purchasing and occurs when one entity assigns the contractual rights it has in a contract to another entity. FEMA advises against the use of piggyback contracts. Piggyback contracts are usually not compliant with Federal requirements as the scope of work pertains to the needs of a different entity.

C. Required Contract Clauses

Applicants must include required provisions detailed in 2 C.F.R. § 200.326 in all contracts awarded.[178] Some provisions are based on sound contracting practices while others are required by Federal law, EO, and regulations.

Required contract provisions include:

- ☐ Remedies Clause;
- ☐ Termination for Cause;
- ☐ Termination for Convenience;
- ☐ Equal Employment Opportunity;
- ☐ Contract Work Hours and Safety Standards Act;
- ☐ Homeland Security Acquisition Regulation Class Deviation 15-01 clauses; "Safeguarding of Sensitive Information" and "Information Technology Security and Privacy Training" for existing and new contracts and solicitations that have a high risk of unauthorized access to or disclosure of sensitive information;[179]
- ☐ Clean Air Act;
- ☐ Federal Water Pollution Control Act;
- ☐ Debarment and Suspension;
- ☐ Byrd Anti-Lobbying Amendment Clause;
- ☐ Byrd Anti-Lobbying Amendment Certification; and
- ☐ Procurement of Recovered Materials.

In addition to the required provisions, FEMA also recommends the following contract provisions be included in all contract awards:

- ☐ Changes Clause;

[178] 2 C.F.R. § 200.326.
[179] "Sensitive Information" is defined in Homeland Security Acquisition Regulation clause 3052 204-71, *Contractor Employee Access*, as any information, which if lost, misused, disclosed, or without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. § 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy.

- ☐ Access to Records;
- ☐ Department of Homeland Security Seal, Logo, and Flags;
- ☐ Compliance with Federal Law, Regulations, and EOs Clause;
- ☐ No Obligation by Federal Government; and
- ☐ Program Fraud and False or Fraudulent Statements or Related Acts.

Some provisions do not apply under the PA Program (e.g. Davis Bacon Act[180] and Rights to Inventions Clause) while others require verbatim language. Appendix K: Contract Provisions provides the exact language for the provisions that require verbatim language and provides sample language for some of the other provisions.

D. Documentation Requirements

The Applicant should submit the following to support contract costs claimed (not an all-inclusive list):

- ☐ Procurement policy (required when requested);
- ☐ Procurement documents (i.e., requests for proposals, bids, selection process, etc.) (required when requested);
- ☐ A cost or price analysis (required for contracts above the simplified acquisition threshold)
- ☐ Contracts, change orders, and summary of invoices (required);
- ☐ Dates worked (required when requested);[181] and
- ☐ Documentation that substantiates a high degree of contractor oversight, such as daily or weekly logs, records of performance meetings (required for T&M contracts when requested).

IX. Mutual Aid

When the Applicant does not have enough resources to respond to an incident, it may request resources from another jurisdiction through a "mutual aid" agreement. FEMA refers to the entity requesting resources as the Requesting Entity. FEMA refers to the entity providing the requested resource as the Providing Entity.

FEMA provides PA funding to the Requesting Entity as it is legally responsible for the work. FEMA does not provide PA funding directly to the Providing Entity. For the work to be eligible, the Requesting Entity must have requested the resources provided.

Some States have a statewide mutual aid agreement that designates the State as being responsible for reimbursing mutual aid costs. In these States, the Providing Entity may request funding directly from the State, with prior consent of the Requesting Entity, in accordance with applicable State laws and procedures. If the Requesting entity and the State approve the request and the State pays the Providing Entity, FEMA provides PA funding to the State. The

[180] The Davis Bacon Act requires "prevailing wage" payment to contracted workers based on the local union wage scale defined by the U.S. Department of Labors. If the Applicant incorporates prevailing wage rates as part of its normal practice for all contracts regardless of the funding source, then those rates are eligible.
[181] FEMA may request this information to validate work was completed within the project's approved period of performance and when applicable for Emergency Work, to determine cost share application per Chapter 6:XIII. *Increased Federal Cost Share for a Limited Timeframe*)

Requesting Entity may be responsible for reimbursing the State for any non-Federal local cost share, depending on specific State requirements.

The Requesting Entity or State, if applicable, must provide a description of the services requested and received, along with documentation of associated costs (e.g., labor, equipment, supplies, or materials) to FEMA in support of a request for PA funding.

A. Post-Incident Agreements

When the Requesting and Providing Entities do not have a written agreement, OR where such an agreement exists but is silent on reimbursement, the entities may verbally agree on the resources to be provided and on the terms, conditions, and costs of such assistance.

The agreement should be consistent with past practices for mutual aid between the entities. For example, if the Requesting Entity does not normally reimburse a Providing Entity for its costs, it should not agree to do so specifically for the declared incident.

Prior to funding, the Requesting Entity must document the verbal agreement in writing, have it executed by an official of each entity with the authority to request and provide assistance, and submit it to FEMA (preferably within 30 days of the Applicant's Briefing).[182]

B. Eligibility

Mutual aid resources are eligible when used for Emergency Work, emergency utility restoration (regardless of whether it is deemed Category B or F) or grant management activities [subject to the criteria in FEMA Recovery Policy FP 104-11-2, *Public Assistance Management Costs (Interim)*]. Mutual aid work is subject to the same eligibility criteria as contract work. Costs to transport the Providing Entity's equipment and personnel to the declared area are eligible.

Ineligible work performed by a Providing Entity includes, but is not limited to:

- Preparing to deploy;
- Dispatch operations outside the receiving State, Territory, or Tribe;
- Training and exercises; and
- Support for long-term recovery and mitigation operations.

The Emergency Management Assistance Compact (EMAC) is a national interstate mutual aid agreement that enables States and Territories to share resources in response to an incident. Work performed outside the receiving State or Territory that is associated with the operation of EMAC, including tracking of resources, is ineligible unless the work is associated with the receiving State's or Territory's emergency operations for the incident.

The Providing Entity's straight-time and overtime labor are eligible, including fringe benefits. When the Requesting Entity is a SLTT government and the Providing Entity is another division within the same SLTT government, straight-time for budgeted employees of the Providing Entity is ineligible.

[182] The Recipient conducts Applicant Briefings to provide PA Program information to potential Applicants. This briefing is described in Chapter 3:II. *Applicant Briefing*.

If the Providing Entity backfills deployed personnel, overtime for backfill personnel is eligible even if they are not performing eligible work. However, straight-time for backfill personnel is ineligible.

FEMA reimburses the use of equipment provided to a Requesting Entity based on either the terms of the agreement or equipment rates (detailed in Chapter 6:III. Applicant-Owned Equipment and Purchased Equipment). FEMA provides PA funding to repair damage to this equipment the same way as it provides PA funding to repair damage to Applicant-owned equipment (detailed in Chapter 7:IV. Damage Caused During Performance of Emergency Work).

The Applicant needs to submit the following to support mutual aid costs claimed (not an all-inclusive list):

- ☐ Written agreement (required);
- ☐ Services requested and received (required);
- ☐ Same information listed for labor, equipment, and supplies (required as applicable); and
- ☐ Invoices (representative sample required when requested).

X. Prisoners

FEMA provides PA funding for prisoner labor costs based on the rate that the Applicant normally pays prisoners. FEMA also provides PA funding for prisoner transportation to the worksite and extraordinary costs of security guards, food, and lodging.[183]

The Applicant should submit the following to support prison labor costs claimed (not an all-inclusive list):

- ☐ Estimated hours and rates for work to be completed;
- ☐ Prison labor pay policy and pay rate (required); and
- ☐ For each individual:
    - Name (required);
    - Days and hours worked (required);
    - Description of work performed (required) should include a representative sample of daily logs or activity reports; and
    - Locations worked (required).

XI. National Guard

The Governor may activate National Guard personnel to State Active Duty in response to an incident. Labor costs and per diem, if applicable, are eligible for State Active Duty personnel performing eligible work. Both straight-time and overtime are eligible, including fringe benefits.

The U.S. Department of Defense funds National Guard personnel activated under Full-Time National Guard Duty (Title 32) or Active Duty (Title 10). Therefore, Title 32 and Title 10 personnel costs, and any other costs funded by the U.S. Department of Defense, such as training, are ineligible.

[183] Stafford Act § 406(a)(2)(B), 42 U.S.C. § 5172.

XII. Direct Federal Assistance

When the impact of an incident is so severe that the SLTT governments lack the capability to perform or contract eligible Emergency Work, the Recipient may request that the Federal government provide this assistance directly. FEMA may task another Federal agency to perform or contract the work provided it is an eligible activity under Chapter 7. *Emergency Work Eligibility*[184] unless the work falls under the authority of another Federal agency.[185] FEMA issues a "Mission Assignment" to task the work and refers to it as Direct Federal Assistance (DFA).[186] DFA has the same cost-share provisions applicable to the declaration (as described in Chapter 1:IV.E. *Federal Cost Share*).

XIII. Increased Federal Cost Share for a Limited Timeframe

When the president authorizes an increased Federal cost share for a limited timeframe, FEMA applies it to all eligible costs related to work performed through 11:59 p.m. on the date of expiration. Therefore, the Applicant needs to delineate costs for work performed prior to the deadline versus costs for work performed after the deadline. The following bullets further define how FEMA applies the increased Federal cost share:

- Employees: Costs for hours worked up to the date and time of expiration.
- Purchased Material and Equipment: Cost to purchase each item that the Applicant needed and used to perform eligible work during the increased funding period. In this case, FEMA also applies the increased Federal cost share to the usage cost up to the date and time of expiration.
- Leased Equipment and Facilities: Lease costs up to date and time of expiration. FEMA may calculate the cost based on a proration of time (i.e., if a facility is leased for six months based on a monthly rate and the period for the increased Federal cost share expired 45 days from the start of the lease, FEMA applies the increased Federal cost share to the cost to lease the facility for 45 days based on a proration of the monthly rate).
- Contract Costs: Costs for work performed up to the date and time of expiration. If costs cannot be distinguished by date performed, FEMA may prorate costs based on the percentage of work completed prior to the deadline versus the percentage of work remaining. However, Applicants should work with contractors to delineate dates associated with work.

XIV. Donated Resources

Individuals and organizations often donate resources to assist with response activities. FEMA does not provide PA funding for donated resources. However, FEMA allows the Applicant to use the value of donated resources (non-cash contributions of property or services)[187] related to eligible Emergency Work to offset the non-Federal cost share of its eligible Emergency Work projects and DFA; and to use the value of donated resources related to eligible work on a Permanent Work Project to offset the non-Federal cost share of that specific Permanent Work

[184] 44 C.F.R. § 206.208(a).
[185] 44 C.F.R. § 206.208(c)(2).
[186] 44 C.F.R. § 206.208(c)(1).
[187] 2 C.F.R.) § 200.96.

Project. FEMA applies the offsets regardless of the cost share arrangements between the Recipient and its Subrecipients.

For Emergency Work specifically, if there is a time-limited 100 percent Federal cost share period (see Chapter 6:XIII. *Increased Federal Cost Share for a Limited Timeframe*) and the Applicant uses resources donated during this time period, it may use the value of those donated resources to offset the non-Federal cost share incurred after the 100 percent Federal cost share period expires. If the Applicant uses resources from its stock that were donated during a previous incident or timeframe, it may use the value of those donated resources to offset its non-Federal cost share if the Applicant has not claimed the resources as an offset in a previous incident.

The Applicant may apply the offset if all of the following conditions are met:

- The donated resource is from a third party. A third party includes private entities or individuals, including individuals that are normally paid employees of the Applicant or Federal, State, Territorial, or Tribal government, but are volunteering as unpaid individuals and not on behalf of the employer);
- The donated resource is necessary and reasonable;[188]
- The Applicant uses the resource in the performance of eligible work[189] and within the respective Project's period of performance;[190] and
- The Applicant or volunteer organization tracks the resources and work performed, including description, specific locations, and hours.[191] The Applicant must track the donated resources for Permanent Work to the specific Project for which it is associated.

FEMA considers unpaid individuals who volunteer their labor to the Applicant to be third-party even if they are officially members or employees of the Applicant organization (e.g. volunteer fire fighters at a PNP volunteer fire department performing eligible Emergency Work).

Resources donated to the Applicant by an organization that would normally provide the same resources under its mission, such as the American Red Cross, are eligible as an offset provided the organization is not federally funded. Additionally, if a mutual aid agreement provides for assistance at no cost to the Applicant, the Applicant may use the value of that assistance to offset its non-Federal cost share.

The value of a donated resource is ineligible as an offset toward the non-Federal cost share if the resource is:

- Donated by a Federal agency;
- Donated by another federally funded source;
- Funded through a Federal award;[192]
- Used as an offset to any other Federal award;[193] or
- Used for ineligible work.

[188] 2 C.F.R. § 200.306(b)(3).
[189] Applicants may not use the value of standby time as a donated resource as no work is being performed.
[190] 2 C.F.R. § 200.309. For Emergency Work, the end of the period of performance is equal to the latest Emergency Work Project's period of performance.
[191] 2 C.F.R. §§ 200.434(d) and 306(b)(1).
[192] 2 C.F.R. § 200.306(b)(5).
[193] 2 C.F.R. § 200.306(b)(2).

Requesting donated resources from contractors during the solicitation phase of a procurement may violate Federal procurement rules as it may be considered overly burdensome or restrictive of competition.[194] To remain compliant, the Applicant can do the following:

- Accept unsolicited donated resources from contractors;
- Maintain a list of donors; and
- Ask contractors that are donating resources to work with other organizations.

If the Applicant accepts donated resources from contractors, it must not do any of the following:

- Solicit donations in its requests for proposals or solicitations for bids;
- Directly solicit donations or requests for proposals from contractors who are actively bidding on its contracts;
- Grant an award to a contractor which has donated resources for the specific work covered by the contract;
- Show favoritism or give the appearance of showing favoritism to a contractor who has donated resources; and
- Limit competition among contractors based on donated resources, especially for smaller contractors (including women or minority owned businesses) that might not be able to afford to donate resources.

A. Offset Amounts

FEMA applies values to donated resources as follows:

- Volunteer Labor: The offset is based on the same straight-time hourly labor rate, and fringe benefits, as a similarly qualified person in the Applicant's organization who normally performs similar work. FEMA does not offset volunteer labor based on overtime or premium rates. If the Applicant does not have employees performing similar work, FEMA credits the non-Federal share based on a rate consistent with those ordinarily performing the work in the same labor market that the Applicant would otherwise compete for that type of work.[195]
- Equipment: The offset is based on equipment rates and must not exceed the fair rental value (if loaned) or the fair market value of equipment that is in similar age and condition at the time of donation (if donated with a transfer of title). See Chapter 6:III. *Applicant-Owned Equipment and Purchased Equipment* for information on equipment rates.[196]
- Supplies or Materials: The offset is based on current commercial rates; which FEMA validates based on invoices from previous purchases or information available from vendors in the area. The amount must not exceed the fair market value at the time of donation.[197]
- Buildings or Land: For buildings or land donated permanently (i.e., with a transfer of ownership), the offset is based on the fair market value at the time of donation as established by an independent appraisal and certified by the Applicant.

[194] 2 C.F.R. § 200.319.
[195] 2 C.F.R. § 200.306(e) and (f).
[196] 2 C.F.R. § 200.306(g), (h), and (i).
[197] 2 C.F.R. § 200.306(g).

- Space: For building or land space donated for temporary use, the offset is based on the fair rental value of comparable privately-owned space in the same locality as established by an independent appraisal.[198]
- Logistical Support: Reasonable logistical support for volunteers doing eligible work, such as donations warehousing and management related to eligible work, may be eligible either for funding (if the Applicant provides the logistical support) or as a donated resource offset (if a third party provides the logistical support), subject to approval by FEMA.

For Emergency Work, FEMA applies the donated resource offset against the combined non-Federal cost share for all the Applicant's Emergency Work Projects (Category A and B) under the declared incident. The offset may not exceed the total out-of-pocket costs and is capped at the total non-Federal cost share of these projects. FEMA prepares the Emergency Work donated resource project as a Category B Project separate from Emergency Work Projects for the Applicant's incurred costs. FEMA does not obligate the donated resource Project until after it obligates all Emergency Work Projects for the Applicant.

For Permanent Work, FEMA applies the donated resource offset against the non-Federal cost share of the specific Permanent Work Project for which the resources were donated. The offset may not exceed the total out-of-pocket costs. FEMA caps the offset at the non-Federal cost share of that specific Permanent Work Project. The type and amount of resources donated must directly correlate to, and may not exceed, the type and amount approved in the scope of work of the Permanent Work Project (e.g., if the approved scope of work includes replacement of 10 chairs and 15 chairs are donated, the donated resource offset is limited to 10 chairs). FEMA adjusts the Permanent Work Project to capture any donated resource offsets related to the Project upon receipt of the donated resource information and no later than closeout.

B. Documentation Requirements

The Applicant needs to submit the following to support donated resources (not an all-inclusive list):

For each individual:

- ☐ Sign-in sheet (required);
- ☐ Name (required);
- ☐ Title and function (required for professional services);
- ☐ Days and hours worked (required); and
- ☐ Location of work and work performed (required).

Equipment:

- ☐ Same information listed under Chapter 6:III. *Applicant-Owned Equipment and Purchased Equipment* (required); and
- ☐ Who donated each piece of equipment (required).

Supplies or materials:

[198] 2 C.F.R. § 200.306(i)(3).

- ☐ Quantity used (required);
- ☐ Who donated (required);
- ☐ Location(s) used (required); and
- ☐ Invoices or other documentation to validate claimed value (required).

XV. Project Management and Design Services

FEMA provides PA funding for costs related to project management and design activities as part of the project. Project management includes activities performed to manage the actual project. These are activities that would be required regardless of whether the entity is receiving PA funding and differ from management costs, which are costs for activities related to the receipt and administration of PA funding.

Project management activities may include procurement actions, legal review of contracts, monitoring contractor work, construction oversight and inspections, environmental and historic preservation permitting actions, completing load tickets for debris operations. These activities are eligible provided they are tracked and directly related to a specific, eligible project.

Architectural, engineering, and design services for the approved scope of work, including hazard mitigation, are also eligible provided the services are reasonable. Some projects do not need these services or require only basic services, while others require specialized engineering and design.

When evaluating the eligibility of project management and design services, FEMA considers whether the project includes improvements that are ineligible for funding (costs for management and design services associated with improvements or other ineligible work are not eligible).

XVI. Grant Management and Administration

FEMA provides contributions for management costs that a Recipient or Subrecipient incurs in administering and managing PA awards. For Recipients, FEMA provides PA funding for management costs based on actual costs incurred up to 7 percent of the total award amount. For Subrecipients, FEMA provides PA funding for management costs based on actual costs incurred up to 5 percent of the Subrecipient's total award amount.[199] Additional information is available in FEMA's interim policy, FEMA Recovery Policy FP 104-11-2, *Public Assistance Management Costs (Interim)* and FEMA's *Public Assistance Management Costs Standard Operating Procedures*.[200]

XVII. Surveys to Assess or Locate Damage or Debris Impacts

The Applicant is responsible for identifying locations of incident-related damage or debris impacts. Costs related to assessing overall impacts of an incident, locating damage or debris impacts, and conducting PDAs are not eligible project costs, but may be eligible as management costs (see Chapter 6:XVI. *Public Assistance Grant Management and Administration*).

[199] Stafford Act § 324(a), 42 U.S.C. § 5165b as amended by the Disaster Recovery Reform Act; and 2 C.F.R. §§ 200.56 and 200.412.
[200] www.fema.gov/media-library/assets/documents/174133.

If, during a survey after the declaration, the Applicant identifies incident-related damage to a facility, the costs related to the inspection of that facility are eligible as management costs provided the facility is eligible.

Further detailed inspections of that damage to determine the extent of damage or quantity of debris and method of repair or removal, including professional evaluations, are eligible as part of the work to restore the facility or work to remove the debris. If the Applicant performs a detailed inspection of a partially damaged system, eligible costs are based on the percentage of the system that was damaged. For example, if after inspecting 500 linear feet of sewer line, the Applicant identified 100 linear feet of line damaged by the incident, only one-fifth of the inspection costs are eligible.

FEMA has specific eligibility criteria for inspecting earthquake damage to buildings constructed with welded steel-moment frames. FEMA bases the eligibility criteria on *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352).[201] The criteria are summarized in Appendix C: *Welded Steel Moment Frame*. Safety inspections are discussed in Chapter 7:II.S. *Safety Inspections*.

XVIII. Duplication of Benefits

FEMA is legally prohibited from duplicating benefits from other sources. If the Applicant receives funding from another source for the same work that FEMA funded, FEMA reduces the eligible cost or de-obligates funding to prevent a duplication of benefits.[202]

A. Insurance Proceeds

FEMA cannot provide PA funding that duplicates insurance proceeds.[203] Consequently, FEMA reduces eligible costs by the amount of:

- Actual insurance proceeds, if known;[204] or
- Anticipated insurance proceeds based on the Applicant's insurance policy, if the amount of actual insurance proceeds is unknown. FEMA subsequently adjusts the eligible costs based on the actual amount of insurance proceeds the Applicant receives.

FEMA requires the Applicant to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). FEMA may limit funding if the insurance policy provides coverage that should be pursued. If the Applicant expends costs to pursue its insurance claim, FEMA offsets the insurance reduction with the Applicant's reasonable costs to pursue the claim if:

- The incurred cost resulted from pursuing insurance proceeds for FEMA-eligible work; and
- The Applicant can provide documentation to show that the incurred cost was attributed to pursuing more insurance proceeds than the initial settlement amount.

[201] www.fema.gov/media-library/assets/documents/747.
[202] Stafford Act § 312, 42 U.S.C. § 5155, and 2 C.F.R. § 200.406.
[203] Ibid.
[204] 44 C.F.R. §§ 206.252(c) and 253(a).

If the Applicant receives insurance proceeds for ineligible losses (e.g., business interruption), FEMA calculates a relative apportionment of insurance proceeds to determine the insurance reduction based on:

- The proceeds received per type of loss as specified by the insurance policy or settlement documentation;
- Policy limits for categories of loss as specified in the insurance policy; or
- The ratio of total eligible losses to total ineligible losses.

FEMA Recovery Policy (FP) 206-086-1, *Public Assistance Policy on Insurance*, describes insurance reductions in detail.[205]

The Applicant should upload the following documentation in PA Grants Portal at the Applicant Level (not an all-inclusive list):

- ☐ Summary of insurance coverage
- ☐ Actual insurance proceeds, if available (required before project is closed)
- ☐ General Property Insurance Policy (required if applicable):
    - Property policy declaration pages;
    - Schedule of covered locations;
    - Property policy forms and endorsements;
    - Inland marine coverage section; and
    - Equipment breakdown section
- ☐ Flood insurance policy (required for flood loss)
- ☐ Wind policy, which may include a separate wind only insurance policy issued by a state Wind Pool or Association [required for wind-related loss (hurricane, tornado, severe weather incident)]
- ☐ Auto insurance policy (required for vehicle damage)
- ☐ Insurance settlement information (required if available):
    - Final Statement of loss;
    - Adjuster's estimates;
    - Settlement checks;
    - Correspondence explaining the settlement amount and allocation; and
    - Letter of denial

B. Non-Federal Grants and Cash Donations

Grants and cash donations from non-Federal sources are subject to the following criteria based on whether the funds are provided toward a specific purpose and whether that specific purpose is otherwise eligible for PA funding.

- If the funds are designated for the same purpose as eligible work, the following apply:
    - The Applicant may use the funds toward its non-Federal cost share.

[205] www.fema.gov/media-library/assets/documents/136089.

  - If the funds are not used toward the non-Federal cost share, FEMA considers the donation or non-Federal grant a duplication of benefits and reduces eligible costs by the duplicated amount.
  - If the funds exceed the amount of the non-Federal cost share, FEMA reduces eligible costs by the excess amount.
- If the funds are designated for non-specific purposes, FEMA does not consider the funds a duplication of benefits. The Applicant may use the funds toward its non-Federal cost share. If the funds exceed the amount of the non-Federal share, the Applicant can apply the excess amount toward ineligible work.
- If the funds are designated for a specific purpose that is ineligible, FEMA does not allow the Applicant to apply the funds toward its non-Federal cost share.

C. Third-Party Liability

When a third party[206] causes damage (e.g., an oil spill) or increases the cost of repair or cleanup and the Applicant requests FEMA funding for the costs, FEMA requires the Applicant to make reasonable efforts to pursue claims to recover costs it is entitled to receive from the third party.

If the costs recovered are not adequate despite the Applicant's good faith effort, FEMA reduces eligible costs based on the recovered amount. If the Applicant receives funds from the third party for eligible and ineligible work or losses, FEMA determines the offset amount based on:

- The proceeds received for eligible losses as specified by the settlement documentation; or
- The ratio of total eligible losses to total ineligible losses.

D. Other Federal Awards

If the Applicant receives funds from another Federal agency for the same purpose as PA funding, it is a duplication of benefits. FEMA cannot duplicate funds provided by another Federal agency.

XIX. Duplication of Funding Between FEMA Programs

FEMA provides assistance under other Programs, such as its IA programs and Hazard Mitigation Grant Program (HMGP), that could duplicate assistance that is available under the PA Program. FEMA must ensure it does not duplicate funds in areas where its programs overlap.

For IA, individuals may receive assistance for work that, under certain circumstances, is also eligible under PA when a SLTT government has legal authority to perform the work. For example, a homeowner may receive IHP assistance for debris clearance from a privately-owned road and the local government may request PA funding for debris clearance from the same road for emergency vehicle access. FEMA must ensure it does not provide PA funding for the same work to two different entities.

For HMGP, FEMA can provide funding for a wide range of mitigation measures, including measures that may also be eligible under the PA Program. FEMA must ensure that PA funds do not duplicate HMGP funds.

[206] A third party is a private entity or individual that is not involved in the Federal award, i.e., not the Applicant or Federal, State, Territorial, or Tribal Government.

XX. Interest on Loans

Applicants may need to obtain a loan to complete work. Financing costs for a loan is only eligible when it meets the conditions established in 2 C.F.R. § 200.449.

XXI. Ineligible Costs

The Stafford Act authorizes FEMA to provide PA funding for specific work performed as a result of the incident. It does not authorize FEMA to provide PA funding for all losses or costs resulting from the incident. The following costs are ineligible because the Stafford Act does not authorize FEMA to provide PA funding for these items.

A. Loss of Revenue

FEMA cannot provide PA funding for revenue lost due to the incident. The following are examples of when loss of revenue may occur because of an incident:

- Hospitals release noncritical patients to make room for survivors;
- Hospitals sustain damage that reduces pre-existing capacity;
- Waiving toll fees on a toll road, even if for evacuation purposes;
- Waiving the normal fee for ferry service to encourage alternate transportation;
- Waiving tipping fees;
- A utility system is shut down; and
- Events are cancelled due to an entity using a venue for incident-related activities, such as sheltering.

B. Loss of Useful Service Life

FEMA cannot provide PA funding for the projected loss of useful service life of a facility. For example, if a road has been inundated by flood waters for an extended timeframe, FEMA cannot provide PA funding for the value of the projected loss of useful life of the road due to the long-term effects the inundation might have on the road. Similarly, FEMA cannot fund the value of the loss of landfill capacity due to incident-related debris.

C. Tax Assessments

SLTT governments may conduct tax assessments to re-assess real property values after an incident. Costs related to conducting these assessments are ineligible because the assessments are neither essential to addressing an immediate threat to life or improved property, nor connected with the permanent restoration of eligible facilities.

D. Increased Operating Costs

Increased costs of operating a facility or providing a service are generally ineligible, even when directly related to the incident. However, short-term increased costs that are directly related to accomplishing specific emergency health and safety tasks as part of emergency protective measures may be eligible, as discussed in Chapter 7:II.F. *Expenses Related to Operating a Facility or Providing a Service*.

CHAPTER 7: EMERGENCY WORK ELIGIBILITY

FEMA is authorized to provide PA funding for Emergency Work,[207] including emergency protective measures and debris removal. This chapter includes PA policy for Emergency Work, which is work that must be done immediately to:

- Save lives;
- Protect public health and safety;
- Protect improved property; or
- Eliminate[208] or lessen an immediate threat of additional damage.[209]

"Immediate threat" is the threat of additional damage or destruction from an incident that can reasonably be expected to occur within 5 years of the declared incident.[210]

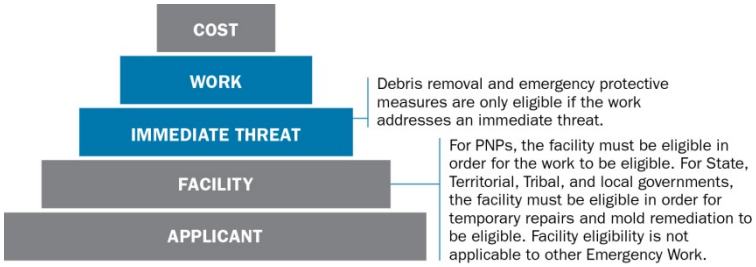


Figure 10. Emergency Work Eligibility

For flood incidents specifically, an immediate threat is a threat from a 5-year flood (a flood that has a 20 percent chance of occurring in any given year). For other incidents, an immediate threat means imminent danger from an incident that can reasonably be expected to occur within 5 years of the declared incident. The declared incident must have caused the immediate threat to exist. However, the threat itself can be from any type of incident; it is not limited to the type of incident that caused the initial damage or threat.

The deadline to complete Emergency Work is 6 months from the declaration date unless the Recipient or FEMA authorize an extension.[211] Although regulations allow 6 months to complete Emergency Work, eligible Emergency Work is that which is necessary to address an immediate threat (as shown in Figure 10. *Emergency Work Eligibility*). FEMA considers the urgency with which the Applicant proceeds with work when evaluating eligibility. The Applicant should not delay in following its normal policies and procedures when taking actions to address threats to life, public health and safety, and improved property.

For PNP Applicants, eligible Emergency Work is generally limited to that associated with an eligible PNP facility as follows:

- Debris removal from the facility property; and

[207] 44 C.F.R. § 206.201(b).
[208] While the regulatory definition of the term "Emergency Work" includes the term "avert," the regulatory language used for the specific eligibility criteria for debris removal and emergency protective measures includes the term "eliminate," not "avert."
[209] In addition to addressing immediate threats to life, health and safety, and improved property, debris removal may be authorized to ensure economic recovery of the affected community.
[210] 44 C.F.R. § 206.221(c).
[211] 44 C.F.R. §§ 206.204(c) and (d).

- Emergency protective measures to prevent damage to the facility and its contents.

In limited circumstances, PNPs may be eligible for other types of Emergency Work when essential components of a facility are urgently needed to save lives or protect health and safety (see Chapter 7:II.D. *Emergency Protective Measures Conducted by Private Nonprofit Organizations* for details).

For SLTT Applicants, evaluating facility eligibility is not necessary for most Emergency Work. For these Applicants, eligibility of Emergency Work is primarily based on evaluation of an immediate threat and legal authority to perform the work. The Applicant must provide the following:

- ☐ Detailed description of work performed (required);
- ☐ Description of immediate threat (required if requested); and
- ☐ Records demonstrating presence of immediate threat (e.g., technical reports, safety inspector reports, photographs) (required if requested).

Environmental and Historic Preservation Considerations

The Applicant should make every effort to inform the Recipient and FEMA of necessary Emergency Work prior to performing the work, when appropriate, to afford FEMA the opportunity to perform EHP reviews and consultations. The Applicant is responsible for obtaining all required EHP permits from the appropriate agencies before proceeding with Emergency Work. FEMA EHP staff is available to assist the Applicant with ensuring the work is compliant with EHP laws, regulations, and EOs.

When performing Emergency Work, the Applicant should avoid new ground disturbance when possible. If the Applicant cannot avoid new ground disturbance, it must consider impacts to natural and cultural resources and obtain all necessary permits. To facilitate EHP review, the Applicant should provide:

- ☐ Site map (including geographical coordinates in latitude, longitude in decimal degrees) showing the location of all proposed areas where the Applicant will conduct site work or construction and the extent of ground disturbance (including any staging areas, access roads, parking, landscaping, grading, or utilities);
- ☐ Construction dates and photographs of all facilities in the project area;
- ☐ Any known environmental issues or historic preservation concerns, such as, but not limited to, threatened and endangered species including their critical habitat, location in floodplain or wetlands, presence of asbestos within the facility, or facility's location in an archaeologically sensitive area;
- ☐ Environmental assessments;
- ☐ Historic property designations or surveys, including archaeological surveys; and
- ☐ Copies of permits and correspondence with regulatory agencies, including but not limited to:
    - State, Territorial, or Tribal Historic Preservation Officer (SHPO/THPO) (historic properties);

- U.S. Army Corps of Engineers (work in navigable waters, work involving dredging or discharging dredged materials or fill in waterways or wetlands);
- U.S. Fish and Wildlife Service (federally listed threatened and endangered species, migratory birds, bald and golden eagles, work in Coastal Barrier Resource System areas, work in or near waterways or wetlands);
- National Oceanic and Atmospheric Administration (federally listed threatened and endangered species, work in in essential fish habitat, work in National Marine Sanctuaries);
- EPA (work involving underground injection, work with the potential to increase contamination of sole source aquifers); and
- State, Territorial, or Tribal environmental agencies (permits for burning, staging, or disposing of debris).

I. Debris Removal (Category A)

Debris removal activities, such as clearance, removal, and disposal, are eligible as Category A if the removal is in the public interest based on whether the work:

- Eliminates immediate threats to lives, public health, and safety;
- Eliminates immediate threats of significant damage to improved public or private property;
- Ensures economic recovery of the affected community to the benefit of the community at large;[212] or
- Mitigates risk to life and property by removing Substantially Damaged[213] structures and associated structures and appurtenances as needed to convert property acquired using HMGP funds to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within 2 years of the declaration date unless extended by the FEMA Assistant Administrator of the Recovery Directorate.[214]

Debris includes, but is not limited to, vegetative debris, construction and demolition debris, sand, mud, silt, gravel, rocks, boulders, white goods, and vehicle and vessel wreckage.

For a PNP, eligible debris removal is limited to that associated with an eligible facility, including debris on the property of the eligible facility.

Removal of debris from improved public property and public rights-of-way (ROWs), including Federal-aid roads,[215] is eligible. If SLTT governments authorize residents to place incident-

[212] This condition is generally restricted to debris removal from large commercial areas when a significant percentage of the commercial sector of a community is impacted and coordinated debris removal is necessary to expedite restoration of the economic viability of the affected community.
[213] Substantial Damage is damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
[214] Stafford Act § 407, 42 U.S.C. § 5173; 44 C.F.R. § 206.224(a).
[215] The term "Federal-aid roads" means the highways on the Federal-aid highway system and all other public roads not classified as local roads or rural minor collectors. The Federal-aid highway system means the National Highway System and the Dwight D. Eisenhower National System of Interstate and Defense Highways (the Interstate System).

related debris on public ROWs, FEMA provides PA funding to remove the debris from the ROWs for a limited timeframe.

The Applicant needs to provide:

- ☐ Estimated debris quantities by type (required for all uncompleted work);
- ☐ Photographs of debris impacts, if available;
- ☐ Location of temporary reduction sites and permanent disposal sites (required);
- ☐ Copies of permits for reduction and disposal sites (required);
- ☐ Quantities of debris removed, reduced, disposed, and recycled (by type) with load tickets to support quantities (required if contracted, FEMA reviews a representative sample);
- ☐ Tower logs (required if contracted, FEMA reviews a representative sample);
- ☐ Documentation to substantiate legal responsibility (required);
- ☐ The basis of the immediate threat determination (required);
- ☐ Location of debris (required); and
- ☐ Documentation to substantiate the debris was deposited by the incident and was not pre-existing (e.g., waterway soundings that show pre-and post-incident levels) (required).

Removal of debris placed on the public ROWs from commercial properties is ineligible unless it is pre-approved by FEMA (see Chapter 7:I.F.2(c). *Removal from Commercial Property (Requires FEMA's Pre-approval*). Additionally, removal of materials related to the construction, repair, or renovation of either residential or commercial structures is ineligible.

Debris removal from the following is ineligible:

- Federally maintained navigable channels and waterways;
- Flood control works under the authority of the Natural Resources Conservation Service (NRCS). Flood control works under the specific authority of NRCS are those that are part of the Watershed and Flood Prevention Operations (WFPO) Program under PL 83-566;[216]
- Agricultural land; and
- Natural, unimproved land, such as heavily wooded areas and unused areas.[217]

Terminology

Flood control works are those structures such as levees, flood walls, flood control channels, and water control structures designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water levels.

Removing debris to restore the pre-disaster capacity of engineered facilities may be eligible as Permanent Work if the Applicant can substantiate the pre-disaster capacity and maintenance of that facility as described in Chapter 8:IX.B.1. *Restoring the Capacity of Channels, Basins, and Reservoirs*.

Removal and disposal of pollutants and hazardous substances are eligible as Category B work in accordance with Chapter 7:II.K. *Hazardous Materials*.

[216] www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo.
[217] 44 C.F.R. § 206.224(b).

Environmental and Historic Preservation Considerations

Although debris removal is usually statutorily excluded from NEPA review,[218] FEMA must ensure compliance with other Federal laws, regulations, and EOs prior to funding the work. Accordingly, FEMA must ensure that the Applicant's debris removal operations avoid impacts to such resources as floodplains, wetlands, federally listed threatened and endangered species and their critical habitats, and historic properties (including maritime or underwater archaeological resources if waterways are impacted). The Applicant must stage debris at a safe distance from property boundaries, surface water, floodplains, wetlands, structures, wells, and septic tanks with leach fields. Additional coordination may be necessary for debris removal from waterways, stump removal, and use of fill.

The Applicant should contact applicable Federal, State, Territorial, and Tribal regulatory agencies to ensure compliance with requirements and permits for debris-related operations. Upon completion of debris removal and disposal, site remediation may be necessary at staging sites and other impacted areas. See more detailed discussion of EHP considerations above in Chapter 7, I.

A. Alternative Procedures for Debris Removal

The Applicant may elect to participate in the Alternative Procedures for debris removal and receive reimbursement for straight-time for the Applicant's budgeted employees that conduct debris removal activities. The Applicant opts-in by including straight-time in their debris removal (Category A) project claims.

B. Hazardous Limbs, Trees, and Stumps

Eligible vegetative debris may include tree limbs, branches, stumps, or trees that are still in place, but damaged to the extent they pose an immediate threat. These items are ineligible if the hazard existed prior to the incident, or if the item is in a natural area and does not extend over improved property or public-use areas, such as trails, sidewalks, or playgrounds.

Contractors typically charge debris removal based on a unit price for volume (cubic yards) or weight (tons). A hazardous tree or stump may be collected individually. When these items are collected individually, contractors often charge a price per tree or stump based on its size. FEMA encourages Applicants to procure branch or limb removal from trees on a one-time charge per tree basis as opposed to a unit price per limb or branch to facilitate more cost-effective operations. FEMA has specific eligibility criteria and documentation requirements for funding these items based on a price per each item instead of by volume or weight. If the Applicant does not provide sufficient documentation, it jeopardizes its PA funding.

Bracing a tree is eligible (as Category B) only when doing so is less costly than removal and disposal. If the Applicant chooses to brace a tree rather than remove it, the tree is ineligible for removal later if it dies.

Pruning, maintenance, trimming, and landscaping are ineligible.

[218] Stafford Act § 316, 41 U.S.C. § 5159.

1. Broken Limb or Branch Removal

Removal of broken limbs or branches that are 2 inches or larger in diameter (measured at the point of break) that pose an immediate threat are eligible. An example is a broken limb or branch that is hanging over improved property or public-use areas, such as trails, sidewalks, or playgrounds if it could fall and cause injury or damage to improved property.

FEMA does not fund removal of broken limbs or branches located on private property unless:

- The limbs or branches extend over the public ROW;
- The limbs or branches pose an immediate threat; and
- The Applicant removes the hazard from the public ROW (without entering private property).

Only the minimum cut necessary to remove the hazard is eligible. For example, cutting a branch at the trunk is ineligible if the threat can be eliminated by cutting it at the closest main branch junction.

2. Tree Removal

FEMA considers incident-damaged trees to be hazardous and eligible if the tree has a diameter of 6 inches or greater measured 4.5 feet above ground level, and the tree:

- Has a split trunk;
- Has a broken canopy; or
- Is leaning at an angle greater than 30 degrees.

For trees that have 50 percent or more of the root-ball exposed, removal of the tree and root-ball and filling the root-ball hole are eligible. For contracted removal of a tree with a root-ball, FEMA will not reimburse two separate unit costs to remove the tree and its root-ball.

For trees that have less than 50 percent of the root-ball exposed, FEMA only provides PA funding to flush cut the item at ground level and dispose of the cut portion based on volume or weight. Grinding any residual stump after cutting the tree is ineligible.

3. Stump Removal

For stumps that have 50 percent or more of the root-ball exposed, removal of the stump and filling the root-ball hole are eligible. If grinding a stump in-place is less costly than extraction, grinding the stump in-place is eligible.

Stump removal in areas with known or high potential for archaeological resources usually requires that FEMA further evaluate and consult with SHPO or THPO. If the Applicant discovers any potential archeological resources during stump removal, the Applicant must immediately cease work and notify FEMA.

(a) Contracted Stump Removal

FEMA only reimburses contracted costs charged on a per-stump basis if:

- The stump is 2 feet or larger in diameter measured 2 feet above the ground; and
- Extraction is required as part of the removal.

The Applicant needs to ensure the price for stump removal includes extraction, transport, disposal, and filling the root-ball hole.

For stumps that have less than 50 percent of the root-ball exposed, FEMA only provides PA funding to flush cut the item at ground level and dispose of the cut portion based on volume or weight. Grinding any residual stump is ineligible.

For stumps smaller than 2 feet in diameter, or for stumps of any size that do not require extraction, FEMA only provides PA funding based on volume or weight as removal of these stumps does not require special equipment. If the Applicant claims reimbursement of these stumps on a per stump basis, FEMA limits PA funding based on a unit price for volume or tons, calculated using Appendix E: *Stump Conversion Table*.

If the Applicant incurs additional costs in picking up stumps 2 feet or larger in diameter that the contractor did not extract, it should complete Appendix F: *Hazardous Stump Worksheet* and present documentation to substantiate the costs as reasonable based on the equipment required to perform the work.

4. Documentation Requirements for Hazardous Limbs, Trees, and Stumps

The Applicant must retain, and provide when requested, all of the following documentation to support the eligibility of contracted work to remove tree limbs, branches, stumps, or trees that are still in place:

- ☐ Specifics of the immediate threat with the location (geographical coordinates in latitude, longitude) and photograph or video documentation that establishes the item is on public property (required, FEMA reviews a representative sample);
- ☐ Quantity removed (Note: If a contractor charged an individual price for each limb, tree, or stump removed, FEMA requires the diameter of each item removed. For stumps, the measurement must be 2 feet up the trunk from the ground. For trees, it must be 4.5 feet up from the ground.) (required);
- ☐ Quantity, location, and source of material to fill root-ball holes (required); and
- ☐ Equipment used to perform the work (required).

C. Waterways

Debris removal from waterways that is necessary to eliminate the immediate threat to life, public health and safety, or improved property is eligible. Removal of debris in a waterway that does not meet this criterion is ineligible, even if the debris is deposited by the incident.

The EPA and U.S. Coast Guard (USCG) have the specific authority to remove hazardous materials, as described in the previous section. EPA is responsible for removing such material from inland water zones and USCG is responsible for coastal water zones. Debris removal from waterways usually requires coordination with the U.S. Army Corps of Engineers (USACE) for the use of a Nationwide permit and with the National Marine Fishery Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) to ensure compliance with Section 7 of the Endangered Species Act (ESA).

1. Navigable Waterways

If the Applicant has legal responsibility for maintenance of a navigable waterway, removal and disposal of debris that obstructs the passage of vessels is eligible to a maximum depth of 2 feet below the low-tide draft of the largest vessel that utilized the waterway prior to the incident. Any debris below this zone is ineligible unless it is necessary to remove debris extending upward into an eligible zone.

If a tree is still rooted to an embankment and is floating or submerged, the cost to cut the tree at the water's edge is eligible.

Debris removal from federally maintained navigable waterways is ineligible. USCG and the USACE have specific authorities for removal of hazardous substances, vessels, and other obstructions from federally maintained navigable waterways.

2. Non-navigable Waterways, Including Flood Control Works and Natural Waterways

Debris deposited by the incident may obstruct a natural waterway (that is, a waterway that is not improved or maintained) or a constructed channel, including flood control works. In these cases, removal of the debris from the channel is eligible if the debris poses an immediate threat, such as when the debris:

- Obstructs, or could obstruct, intake structures;
- Could cause damage to structures, such as bridges and culverts; or
- Is causing, or could cause, flooding to improved public or private property during the occurrence of a 5-year flood.

Removal of the obstruction is eligible in **streams** where debris removal might also be eligible under the NRCS Emergency Watershed Protection Program (EWP)[219] unless NRCS provides assistance for the debris removal. However, FEMA, the Recipient, and the Applicant need to coordinate with NRCS first to ensure that any work performed does not jeopardize other assistance that may be eligible under the EWP.

Debris removal from **flood control works** that are under the specific authority of NRCS is ineligible for PA funding, even if NRCS does not have sufficient funding or does not provide assistance. Flood control works under the specific authority of NRCS are those that are part of the WFPO Program under PL 83-566.[220]

For flood control works that are eligible for the USACE Rehabilitation and Inspection Program (RIP),[221] debris

NRCS EWP and USACE RIP

The **NRCS EWP** is an emergency recovery program designed to relieve imminent hazards to life and property caused by floods, fires, windstorms, and other natural occurrences. Activities include, but are not limited to, providing financial and technical assistance to:

- Remove debris from stream channels, road culverts, and bridges
- Reshape and protect eroded banks
- Correct damaged drainage facilities
- Establish cover on critically eroding lands
- Repair levees and structures
- Repair conservation practices

The **USACE RIP** provides rehabilitation assistance for flood risk reduction structures.

[219] www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/ewpp.
[220] www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo.
[221] www.usace.army.mil/Missions/CivilWorks/LeveeSafetyProgram/LeveeInspections.aspx.

removal is eligible for PA funding. USACE does not reimburse Applicants for debris removal but conducts this activity directly when necessary.

3. Identifying Debris Impact Locations

The Applicant is responsible for identifying debris deposited by the incident that poses an immediate threat. Random surveys to look for debris, including surveys performed using side scan sonar, are ineligible. However, if the Applicant identifies an area of debris impacts and demonstrates the need for a survey to identify specific immediate threat, FEMA may provide PA funding for the survey in that location, including the use of side scan sonar.

D. Privately Owned Vehicles and Vessels on Public Property

Removal of privately-owned vehicles and vessels from public property is eligible if all of the following conditions are met:

- The vehicle or vessel blocks access to a public-use area;
- The vehicle or vessel is abandoned;
- The Applicant follows applicable SLTT government ordinances or laws for private vehicle or vessel removal; and
- The Applicant documents the handling of the vehicle or vessel.

The Applicant needs to retain documentation to support it met these criteria.

A limited timeframe for vehicle and vessel storage is eligible if it is necessary to remove the item prior to being able to identify the owner. If the owner is identified, the Applicant should work with private property owners to pursue and recover storage and removal costs and credit FEMA the Federal share of any funds received.

E. Disposal

FEMA provides PA funding for various costs related to disposing of debris. The Applicant should dispose of debris in an efficient and cost-effective manner.

Vegetative debris is bulky and can consume a significant volume of landfill space. To minimize the use of landfill space, FEMA encourages the Applicant to reduce the volume of vegetative debris before burying. Costs to reduce vegetative debris using methods such as mulching, grinding, or burning are eligible.

When removing sand, disposal of sand spoils on a public beach may be eligible as part of the debris removal project when it is the most cost-effective method of disposal.

Certain types of construction and demolition debris are reusable or recyclable. The Applicant should conserve landfill space by separating materials for reuse or recycling.

1. Recycling Revenue

If the Applicant receives revenue for recycling debris, FEMA reduces PA funding by the amount of revenue received. The Applicant may deduct costs for administering and marketing the sale of the salvageable materials from the fair market value.

If a contract allows the contractor to take possession of salvageable material and benefit from its sale to lower bid prices, there is no salvage value to be recovered at the end of the project. Therefore, the Applicant has no further obligation to FEMA.

2. Temporary Staging Sites

Establishing and operating a temporary staging site necessary for debris separation and reduction is eligible. The cost to lease property is eligible. Additionally, if the terms of the lease require that the Applicant restore the leased property back to its condition prior to the Applicant's use, the costs related to that restoration are also eligible as part of the Category A project. If leased, the Applicant must provide the lease agreement.

3. Hand-Loaded Trucks and Trailers

FEMA has determined that, for vegetative debris, hand-loaded trucks and trailers achieve approximately half the compaction level of mechanically loaded trucks and trailers. Therefore, FEMA only provides PA funding for 50 percent of the vegetative debris in hand-loaded trucks and trailers.

Similarly, trucks without solid tailgates cannot be compacted to full capacity. Therefore, FEMA only funds up to a maximum of 85 percent of the debris in trucks without solid tailgates.

The Applicant must document the types and total quantity of hand-loaded debris, and the types and total quantity of debris hauled in trucks without solid tailgates and provide this information to FEMA to ensure appropriate reductions are taken for this debris.

4. Landfills and Tipping Fees

Landfill tipping fees usually include fixed and variable costs, along with special taxes or fees assessed by the jurisdiction in which the landfill is located. Eligible tipping fee costs are limited to the variable and fixed costs that are directly related to landfill operations, such as recycling tax. The components of tipping fees that are not directly related to landfill operations, such as special taxes or fees related to other government services or public infrastructure, are ineligible as part of the tipping fee. When providing PA funding for tipping fees, FEMA removes any ineligible components.

The Applicant may use a significant portion of the available capacity of a landfill to dispose of incident-related debris. Although FEMA provides PA funding for tipping fees, it cannot provide PA funding for the value of the loss of landfill capacity due to incident-related debris.

Eligible Tipping Fee Components

Eligible fixed costs include:

- Equipment
- Construction
- Permits
- Landfill closure
- Post-closure activities
- Amortized costs for facilities that support the landfill

Eligible variable costs include:

- Labor
- Supplies
- Maintenance
- Operation of utilities
- Operation of gas recovery systems

F. Monitoring Contracted Debris Removal Operations

FEMA requires the Applicant to monitor all contracted debris operations to ensure that the quantities and work claimed are accurate and eligible. This includes documenting debris quantities by types, quantities reduced, reduction methods, and pickup and disposal locations. If the Applicant does not monitor contracted debris removal operations, it jeopardizes its PA funding for that work.

The Applicant may use force account resources (including temporary hires), contractors, or a combination of these for monitoring. It is not necessary, or cost-effective, to have Professional Engineers or other certified professionals perform debris monitoring duties. FEMA considers costs unreasonable when associated with the use of staff that are more highly qualified than necessary for the associated work. If the Applicant uses staff with professional qualifications to conduct debris monitoring, it must document the reason it needed staff with those qualifications.

FEMA provides training to the Applicant's force account debris monitors (including its temporary hires) upon request.

Eligible activities associated with debris monitoring include, but are not limited to:

- Field supervisory oversight;
- Monitoring contracted debris removal at both the loading and disposal sites
- Compiling documentation, such as load tickets and monitor reports, to substantiate eligible debris; and
- Training debris monitors on debris removal operations, monitoring responsibilities and documentation processes, and FEMA debris eligibility criteria.

G. Debris Removal from Private Property

Debris removal from private property (PPDR) is the responsibility of the property owner and is usually ineligible under the PA Program. In limited circumstances, based on the severity of the impact of an incident and whether debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, FEMA may determine that debris removal from private property is eligible under the PA Program. In such cases, FEMA works with the SLTT governments to designate specific areas where debris removal from private property, including private waterways, is eligible. The debris removal must be in the public interest, not merely benefiting an individual or a limited group of individuals. Figure 11. *Debris on Private Property* is an example of the level of debris impacts that may warrant FEMA assistance for PPDR.

Figure 11. Debris on Private Property

1. Approval Process

The Applicant must submit a written request to FEMA identifying the specific properties or areas of properties where private property debris removal activities will occur. Once FEMA receives the request, it engages with the Recipient and Applicant to review the request and conduct site inspections. With exception of debris removal from commercial property, the Applicant does not need to wait for FEMA approval to start work. However, for the Applicant to receive PA funding, FEMA must determine that the PPDR work at each property is eligible.

Clarification of Demolition versus Debris

If more than one wall of a structure is standing and not in immediate danger of collapsing, FEMA considers the removal of that structure to be demolition and not debris removal. Demolition is subject to additional requirements and **must** comply with Chapter 7:II.U. *Demolition of Private Structures*.

FEMA only approves PA funding for PPDR if the Applicant demonstrates all of the following with sufficient documentation:

(a) Legal Authority and Indemnification

FEMA accepts a written statement from an authorized Applicant official that:

- ☐ Certifies the Applicant has legal authority and responsibility to remove debris from private property;
- ☐ Cites all applicable sources of authority (law, ordinance, code, contract, etc.); and
- ☐ Indemnifies the United States for any claim arising from the debris removal.

(b) Public Interest.

The Applicant must demonstrate that the PPDR was in the public interest.[222] This includes:

- ☐ The basis for the determination that removing the debris from the private property locations requested was in the public interest. The determination must be made by the State, Territorial, Tribal, county, or municipal government's public health authority or other public entity that has legal authority to make a determination that disaster-generated debris on private property constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the community at large.
- ☐ The established, specific legal requirements for declaring the existence of a threat to public health and safety.

FEMA evaluates the submission to determine if it concurs that PPDR is in the public interest and provides a written response specifying any properties or area of properties for which it approves funding for debris removal.

2. Removal from Private Roads

Private roads are those that are not owned or operated by or otherwise the legal responsibility of a Federal or SLTT entity (including orphan roads, roads in gated communities, homeowners' association roads, etc.). If the public has unrestricted access (no locks, gates, or guards) and

[222] Stafford Act § 407, 42 U.S.C. § 5173; 44 C.F.R. § 206.224(b).

frequently uses the private road, then removal and disposal of the debris, including debris placed at the curbside by residents, is in the public interest and the Applicant is not required to submit documentation demonstrating the debris removal is in the public interest. This does not include debris on private driveways or parking lots. It also does not include removal and disposal activities from private roads in areas with restricted access (roads behind locks, gates, or guards) or private roads that are unrestricted but rarely used by the public. The Applicant must provide further documentation to establish that removal is in the public interest in these areas and, though not required, Applicants should consider obtaining approval from FEMA prior to starting removal and disposal. Debris clearance (push or cut and toss) for emergency access may be eligible as Category B work if it meets the criteria in Chapter 7:II.J. *Emergency Access*.

3. Removal from Private Residential Property

Debris removal from residential property is usually not in the public interest because the debris does not typically present an immediate health and safety threat to the general public. If the incident generates debris quantities and/or types of debris on residential property that is so widespread or of such magnitude that it creates an immediate threat to public health and safety, debris removal may be in the public interest. To determine if removal of debris from private residential property is in the public interest, FEMA evaluates the public health determination (see Chapter 7:I.E.1(b). Public Interest, and will consider:

- Whether the debris is located in open areas accessible to the public (e.g., in a yard with no fence barrier next to a public sidewalk), located in maintained areas, or creating a health and safety hazard (such as a rodent infestation);
- Volume of debris;
- Height of debris;
- Number of houses and blocks with large volumes of debris; and
- Amount of the public population affected.

Given these additional considerations, Applicants should consider obtaining approval from FEMA prior to starting work.

4. Removal from Commercial Property (Requires FEMA's Pre-approval)

Removal of debris from commercial properties, such as industrial parks, golf courses, cemeteries, apartments, condominiums, and trailer parks is generally ineligible because commercial enterprises are expected to retain insurance that covers debris removal. In very limited, extraordinary circumstances, FEMA may provide an exception. In such cases, the Applicant must meet the requirements of Chapter 7:I.E.1. Approval Process and FEMA must approve the work prior to the Applicant removing the debris.

5. Duplication of Benefits

The Applicant needs to work with private property owners to pursue and recover insurance proceeds and credit FEMA the Federal share of any insurance proceeds received. In some circumstances, FEMA may provide IA assistance to individuals for debris removal; consequently, FEMA PA staff coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

II. Emergency Protective Measures (Category B)

Emergency protective measures conducted before, during, and after an incident are eligible if the measures:

- Eliminate or lessen immediate threats to lives, public health, or safety; OR
- Eliminate or lessen immediate threats of significant additional damage to improved public or private property in a cost-effective manner.[223]

FEMA may require certification by Federal or SLTT government officials that a threat exists, including:

- Identification and evaluation of the threat; and
- Recommendations of the work necessary to cope with the threat.[224]

Environmental and Historic Preservation Considerations

Although emergency protective measures are usually statutorily excluded from NEPA review, FEMA **must** ensure compliance with other Federal laws, regulations, and EOs prior to funding the work. Accordingly, FEMA **must** ensure that the Applicant's emergency protective measures avoid impacts to such resources as floodplains, wetlands, federally listed threatened and endangered species and their critical habitats, and historic properties. Additional coordination may be necessary for projects such as, but not limited to, new construction related to the temporary relocation of emergency services, mosquito abatement, disposal of contaminated sandbags, or the construction of temporary levees, roadways, or bridges. See more detailed discussion of EHP considerations above in Chapter 7:I.

A. Saving Lives and Protecting Public Health and Safety

Emergency protective measures save lives or protect public health or safety. Eligible emergency protective measures and costs include, but are not limited to:

- Transporting and pre-positioning equipment and other resources for response;
- Flood fighting;
- EOC-related costs;
- Emergency access;
- Supplies and commodities;
- Medical care and transport;
- Evacuation and sheltering, including that provided by another State or Tribal government;
- Childcare;
- Safety inspections;
- Animal carcass removal;[225]

[223] 44 C.F.R. § 206.225(a)(3).
[224] 44 C.F.R. § 206.225(a)(2).
[225] FEMA may fund the removal of animal carcasses as Category A if the removal is part of the Applicant's overall debris disposal operation as opposed to a separate and distinct operation.

- Demolition of structures[226];
- Search and rescue to locate survivors, household pets, and service animals requiring assistance;
- Firefighting;
- Security, such as barricades, fencing, or law enforcement;
- Use or lease of temporary generators for facilities that provide essential community services;
- Dissemination of information to the public to provide warnings and guidance about health and safety hazards using various strategies, such as flyers, public service announcements, or newspaper campaigns;
- Searching to locate and recover human remains;
- Storage and interment of unidentified human remains; and
- Mass mortuary services.

The following are eligible under limited circumstances based on specific criteria described in each of the referenced sections:

- Expenses related to operating a facility or providing an emergency service (see Chapter 7:II.F. *Expenses Related Operating a Facility or Providing a Service*);
- Mosquito abatement (see Chapter 7:II.Q. *Mosquito Abatement*);
- Temporary relocation of essential services (see Chapter 7:II.V. *Temporary Relocation of Essential Services*); and
- Snow-related activities when specifically authorized in the declaration (see Chapter 7:II.W. *Snow-Related Activities*).

B. Protecting Improved Property

Eligible emergency protective measures to protect improved property[227] include, but are not limited to:

- Constructing emergency berms or temporary levees to provide protection from floodwaters or landslides;
- Emergency repairs necessary to prevent further damage, such as covering a damaged roof to prevent infiltration of rainwater;
- Buttressing, shoring, or bracing facilities to stabilize them or prevent collapse;
- Emergency slope stabilization;
- Mold remediation;
- Removal and storage of contents from eligible facilities for the purpose of minimizing additional damage;
- Extracting water and clearing mud, silt, or other accumulated debris from eligible facilities if the work is conducted expeditiously for the purpose of addressing an immediate threat (if the work is only necessary to restore the facility, it is Permanent Work, not Emergency Work);

[226] FEMA usually reimburses demolition of a public structure as part of the Permanent Work project to replace the facility.
[227] 44 C.F.R. § 206.221(d). Improved property means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

- Taking actions to save the lives of animals that are eligible for replacement (see Chapter 8:IX.C.5. *Animals*).

C. Emergency Protective Measures on Private Property

In limited circumstances, FEMA may determine that emergency protective measures conducted on private property are eligible under the PA Program if:

- ☐ The immediate threat is widespread, affecting numerous homes and businesses such that it is a threat to the health and safety of the general public;
- ☐ The Applicant has legal authority to perform the work; and
- ☐ The Applicant obtained rights-of-entry and agreements to indemnify and hold harmless the Federal government.

Situations where this may occur are generally limited to:

- Demolition of unsafe private structures that endanger the public (Chapter 7:II.U. *Demolition of Private Structures*);
- Installation of fiber-reinforced sheeting to cover damaged roofs, commonly referred to as Operation Blue Roof (DFA only) (Chapter 7:II.X.1. *Operation Blue Roof*);
- Provision of emergency access (Chapter 7:II.J. *Emergency Access*);
- Pumping of flooded basements;
- Pumping of septic tanks or decontamination of wells causing a pollution threat (Chapter 7.II.K. *Hazardous Materials*);
- Residential electric meter repair (Chapter 7:II.R. *Residential Electrical Meter Repair*);
- Safety inspections (Chapter 7:II.S. *Safety Inspections*); and
- Stabilizing a slope (Chapter 7:II.X.2. *Slope Stabilization*).

Upon submittal of its claim, the Applicant must include the following support documentation for the work to be eligible:

- ☐ A detailed explanation documenting the Applicant's legal authority and responsibility to enter private property;
- ☐ The basis for the determination that a threat exists to the general public; and
- ☐ Copies of the rights-of-entry and agreements to indemnify and hold harmless the Federal government.

If the above criteria are not met, the private property owner may be eligible for assistance under FEMA's IA Programs. FEMA PA and IA staff coordinate closely to ensure FEMA does not fund the same work under both programs.

D. Emergency Protective Measures Conducted by Private Nonprofit Organizations

For PNPs, eligible emergency protective measures are generally limited to activities associated with preventing damage to an eligible facility and its contents.

Emergency services are usually the responsibility of SLTT governments. Therefore, PNPs are generally not legally responsible for those services and FEMA does not provide PA funding to PNPs for the costs associated with providing those services. When a PNP provides emergency services at the request of, and certified by, the legally responsible government entity, FEMA

provides PA funding through that government entity as the eligible Applicant. These services include:

- Fire and rescue activities;
- Animal control;
- Emergency ambulance service for evacuation;
- 211 call services, if tracked and related to eligible work; and
- Other similarly urgent governmental services.

PNPs that own or operate a medical or custodial care facility are eligible for direct reimbursement of costs related to patient evacuation. In limited circumstances, FEMA may also reimburse a PNP directly when essential components of a facility are urgently needed to save lives or protect health and safety, such as an emergency room of a PNP hospital or a PNP sewage or water treatment plant.

Additionally, if a PNP volunteer fire department operates based on established agreements with a SLTT government that designates the volunteer fire department as an official recognized entity legally authorized to provide emergency services in areas of coverage specifically designated by the SLTT government, FEMA may reimburse the volunteer fire department directly as an eligible Applicant.

E. Pre-positioning Resources

Costs related to pre-positioning resources specifically for the declared incident are eligible if the resources are used in the performance of eligible Emergency Work.

Additionally, costs related to pre-positioning resources outside of the declared area are eligible when related to conducting search and rescue, evacuation, sheltering, or providing emergency medical care during the evacuation period (such as ambulances, buses, and staff) provided the resources were ultimately used for the declared area.

F. Expenses Related to Operating a Facility or Providing a Service

The Applicant may incur increased costs related to operating a facility or providing a service as a result of the incident because of an increased demand for the services the facility provides.

These additional costs are only eligible if:

- The services are specifically related to eligible emergency actions to save lives or protect public health and safety or improved property;
- The costs are for a limited timeframe based on the emergency or exigency of the circumstances; and
- The Applicant tracks and documents the additional costs.

Increased operating costs that may be eligible for a limited time, include but are not limited to, costs for:

- Generators at a hospital or police station;
- Water testing and treatment, including supplies, in the immediate aftermath of the incident to counter a specific threat;
- Fuel for increased use of a pumping station; and
- EOC facility costs (e.g., utilities).

Increased operating costs that are ineligible, even for a limited time, include but are not limited to, costs for:

- Patient care, except as noted in Chapter 7:II.N. *Medical Care*;
- Administrative activities;
- Provision of food, except as noted in Chapter 7:II.L. *Supplies and Commodities*; and M. *Meals*;
- Costs related to staff that were retained to work additional hours, but did not perform eligible Emergency Work (e.g., staff working additional shifts due to other staff's inability to get to work);
- Obtaining electrical power from an alternate source;
- Obtaining water from an alternate source;
- School make-up days, including contracted costs for bus service for make-up days;
- Provision of school bus service including fuel or mileage for transporting students from alternate locations or to alternate schools or temporary facilities; and
- Modification or construction of a new landfill to add landfill capacity.

For PNPs, operating costs are generally ineligible even if the services are emergency services, unless the PNP performs an emergency service at the request of and certified by the legally responsible government entity. In such case, FEMA provides PA funding through that government entity as the eligible Applicant.

G. Emergency Public Transportation and Communication (DFA only)

A SLTT government may provide emergency communication services and public transportation when existing systems are damaged to the extent vital functions of community life or incident response are disrupted. The costs of these services are ineligible for reimbursement.[228] However, FEMA may provide short-term DFA for these services.[229]

H. Flood Fighting

Flood fighting activities may include, but are not limited to, sandbagging, dewatering behind a levee by breaching or pumping, or increasing the height of a levee. These activities are eligible if necessary to reduce an immediate threat to life, public health and safety, or improved property. These activities are eligible even if they are associated with a facility that is eligible for the USACE RIP, as USACE cannot reimburse the Applicant for flood fighting. However, they are ineligible if associated with flood control works under the specific authority of NRCS.

The repair of deliberate breaches made by the Applicant to accomplish dewatering is eligible as part of the Emergency Work Project.

Dewatering agricultural and natural areas behind levees and other water control structures is ineligible.

[228] Transportation costs for the purpose of evacuation are eligible for reimbursement as described in Chapter 7:II.O. *Evacuation and Sheltering*.
[229] Stafford Act §§ 418 and 419, 42 U.S.C. §§ 5185 and 5186; 44 C.F.R. §§ 206.225(c) and (d).

I. Emergency Operations Centers

The Applicant may use its EOC to direct and coordinate resources and response activities for a period of time. Response activities conducted at EOCs are eligible provided they are associated with eligible work. Costs associated with operating the EOC are also eligible, including, but not limited to:

- Increased utility costs;
- Costs to lease a facility;
- Supply costs; and
- Meal costs, as described in Chapter 7:II.M. *Meals*.

J. Emergency Access

There are times when the incident causes damage or debris blockage to access routes to an essential community service, or to a community with survivors. If the extent of damage or blockage makes these areas inaccessible, work related to providing access is eligible. This includes clearing debris from or conducting emergency repairs to an access facility, such as a road or bridge. Eligible work is limited to that necessary for the access to remain passable. Any debris removal or additional debris clearance is Category A and funded based on the criteria in Chapter 7:I. *Debris Removal (Category A)*.

Debris Clearance versus Debris Removal

Debris Clearance is the clearance of debris to allow passage only. It does not include hauling or disposing of the debris. Debris clearance is often referred to as "cut and toss" or "push".

Debris Removal includes hauling and disposing of debris at a temporary or final disposal site.

Private roads are those that are not owned or operated by or otherwise the legal responsibility of a local, county, Tribal, Territorial, State, or Federal entity. Clearance of debris from private roads-including orphan roads, roads in gated communities, homeowners' association roads, etc. is in the public interest if the debris impairs emergency access by local emergency responders, ambulances, fire, and police. For example, downed trees may be cut and moved off the roadway. Eligible work is limited to that necessary for roads to remain passable but might include removal and disposal during the initial pass as necessary to ensure emergency access. The Applicant is not required to submit documentation demonstrating that debris clearance is in the public interest.

The Applicant must complete all necessary legal processes or obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government.

Emergency repairs to privately-owned roads, including those within gated communities, are eligible only when all of the following conditions are met:

- There is no other access point;
- Repair of the damage economically eliminates the need for temporary housing; and
- The Applicant completes all legal processes and obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government.

Upon submittal of its claim, the Applicant must include documentation supporting that it met the conditions above in order for the work to be eligible.

K. Hazardous Materials

Removal and disposal of pollutants and hazardous substances are eligible. Eligible activities include:

- Separation of hazardous materials from other debris;
- Specialized procedures for handling and disposing of hazardous materials;
- Control or stabilization of the hazardous material;
- Pumping water contaminated with the hazardous material; and
- Clean-up and disposal of the hazardous material.

Testing for contaminants in water, air, or soil necessary to ensure elimination of the immediate threat is eligible in accordance with Chapter 7:II.F. *Expenses Related to Operating a Facility or Providing a Service*. However, testing for the purpose of long-term cleanup actions is ineligible.

The Applicant must comply with Federal and SLTT government environmental requirements for handling hazardous materials. Before handling or disposing of hazardous materials, the Applicant should contact the appropriate Federal or SLTT agency to obtain required permits, notify proper agencies of hazardous materials storage, and to coordinate the creation of any required facility specific Emergency Response Plans for spills, safety and proper handling. Additionally, appropriate certified hazardous waste specialists should handle, capture, recycle, reuse, or dispose of hazardous materials. When providing PA funding for work involving the handling of hazardous materials, FEMA must ensure compliance with the Resource Conservation and Recovery Act (RCRA).

Additionally, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) authorizes the Federal Government to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Under CERCLA and the Clean Water Act (CWA), EPA[230] and the USCG have the authority to respond to actual or potential discharges of oil, hazardous substances, pollutants, and contaminants that may present an imminent and substantial danger to public health or welfare. EPA has responsibility for responses in the inland zone[231] and the USCG has responsibility for responses in the coastal zone.[232] Response actions may include containment, stabilization, decontamination, collection (e.g., orphan tanks, drums), and disposal.

L. Supplies and Commodities

The purchase of supplies and commodities required for emergency protective measures is eligible.

Costs related to the Applicant purchasing supplies or using its own stock to perform Emergency Work are eligible and reimbursed in accordance with Chapter 6:III.5. *Supplies*. Examples

[230] See Recovery Policy 9523.8, *Mission Assignments for ESF#10*, for discussion on U.S. Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) authority with respect to removal of hazardous waste: www.fema.gov/media-library/assets/documents/136089.

[231] The inland zone is the environment inland of the coastal zone, excluding the Great Lakes and specified ports and harbors on inland rivers. Precise boundaries are identified in Federal regional contingency plans.

[232] The coastal zone includes coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of coastal States, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

include, but are not limited to, safety equipment, personal protective equipment, radios, power tools, sand, and tarps.

Purchasing and packaging life-saving and life-sustaining commodities and providing them to the impacted community are eligible. Examples of such commodities include, but are not limited to, food, water, ice, personal hygiene items, cots, blankets, tarps, plastic sheeting for roof damage, and generators, as well as food and water for household pets and service animals. The cost of delivering these same commodities to unsheltered residents in communities where conditions constitute a level of severity such that these items are not easily accessible for purchase is also eligible. This includes food and water for household pets whose owners are in shelters.

The cost of leasing distribution and storage space for the commodities is also eligible.

M. Meals

Applicants often provide meals for emergency workers. Provision of meals, including beverages and meal supplies, for employees and volunteers engaged in eligible Emergency Work, including those at EOCs, is eligible provided the individuals are not receiving per diem and one of the following circumstances apply:

- Meals are required based on a labor policy or written agreement that meets the requirements of Chapter 6. *Cost Eligibility*;
- Conditions constitute a level of severity that requires employees to work abnormal, extended work hours without a reasonable amount of time to provide for their own meals; or
- Food or water is not reasonably available for employees to purchase.

FEMA only reimburses the cost of meals that are brought to the work location and purchased in a cost-effective and reasonable manner, such as bulk meals. FEMA does not reimburse costs related to group outings at restaurants or individual meals.[233]

N. Medical Care

When the emergency medical delivery system within a declared area is destroyed, severely compromised or overwhelmed, FEMA may fund extraordinary costs associated with operating emergency rooms and with providing temporary facilities for emergency medical care of survivors. Costs associated with emergency medical care should be customary for the emergency medical services provided. Costs are eligible for up to 30 days from the declaration date unless extended by FEMA.

[233] FEMA reimburses meal costs as part of a contract in accordance with the contract terms provided it meets the requirements in Chapter 4:VIII. *Procurement and Contracting Requirements*.

Eligible medical care includes, but is not limited to:

- Triage and medically necessary tests and diagnosis;
- Treatment, stabilization, and monitoring;
- First-aid assessment and provision of first aid;
- A one-time 30-day supply of prescriptions for acute conditions or to replace maintenance prescriptions;
- Vaccinations for survivors and emergency workers to prevent outbreaks of infectious and communicable diseases;
- Durable medical equipment;
- Consumable medical supplies;
- Temporary facilities, such as tents or portable buildings for treatment of survivors;
- Leased or purchased equipment for use in temporary medical care facilities;
- Security for temporary medical care facilities; and
- Use of ambulances for distributing immunizations and setting up mobile medical units.

Terminology

Durable medical equipment is reusable medical equipment necessary for the treatment of an illness or injury or to prevent a patient's further deterioration. The equipment includes, but is not limited to:

- Oxygen equipment
- Wheelchairs
- Walkers
- Hospital beds
- Crutches
- Other medical equipment

Consumable medical supplies are medical supplies that are ingested, injected, or applied or are for one-time use only, including, but not limited to:

- Medical supplies
- Medications
- Diapers
- Adult incontinence briefs
- Bandages

Long-term medical treatment is ineligible. FEMA determines the reasonableness of these costs based on Medicare's cost-to-charge ratio (a ratio established by Medicare to estimate a medical service provider's actual costs in relation to its charges).

FEMA does not provide PA funding for these costs if underwritten by private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.[234] The Applicant must take reasonable steps to provide documentation on a patient-by-patient basis verifying that insurance coverage or any other source funding including private insurance, Medicaid, or Medicare, has been pursued and does not exist for the costs associated with emergency medical care and emergency medical evacuations.

Ineligible costs include:

- Medical care costs incurred once a survivor is admitted to a medical facility on an inpatient basis;
- Costs associated with follow-on treatment of survivors beyond 30 days of the declaration; and
- Administrative costs associated with the treatment of survivors.

[234] Stafford Act § 312, 42 U.S.C. § 5155.

O. Evacuation and Sheltering

Evacuation and sheltering of survivors are eligible activities. This includes household pets and service and assistance animals, but not exhibition or livestock animals.

1. Evacuation

Transportation to evacuate (and subsequently return) survivors, household pets, service animals, assistance animals, luggage, and durable medical equipment is eligible. This includes emergency medical transportation. The mode of transportation should be customary and appropriate for the work required.

Eligible activities include, but are not limited to:

- Transferring patients from inoperable, compromised, or overwhelmed eligible medical or custodial care facilities to another medical facility or to a shelter;
- Transferring patients back to original medical or custodial care facility, when appropriate;
- Transporting survivors, including shelterees, who require emergency medical care to and from the nearest existing or temporary medical care facility equipped to adequately treat the medical emergency. Transport may include emergency air, sea, or ground ambulance services if necessary;
- Use of equipment such as buses, trucks, or other vehicles (including accessible vehicles) to provide one-time transportation to evacuate survivors and their household pets and service and assistance animals to emergency shelters from pre-established pick-up locations. This includes standby time for drivers and contracted equipment while waiting to transport survivors;
- Paratransit transportation services, such as vans, minibuses, and buses, (including accessible vehicles) to transport senior citizens, individuals with disabilities (including mobility disabilities) or access and functional needs, individuals in nursing homes and assisted-living facilities, and homebound individuals impacted by the incident;
- Tracking of evacuees, household pets, service animals, luggage, and durable medical equipment. This includes the use of animal microchips for the purpose of tracking evacuated animals;
- Food and water provided during transport;
- Emergency medical care provided during transport, including emergency medical personnel and supply costs;
- Stabilization of individuals injured during evacuation; and

Terminology

Household pets are domesticated animals that:

- Are traditionally kept in the home for pleasure rather than for commercial purposes
- Can travel in commercial carriers
- Can be housed in temporary facilities

Examples are dogs, cats, birds, rabbits, rodents, and turtles.

Household pets do not include reptiles (except turtles), amphibians, fish, insects, arachnids, farm animals (including horses), or animals kept for racing purposes.

Service animals are dogs that are individually trained to do work or perform tasks for people with disabilities or access and functional needs.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates identified symptoms or effects of a person's disability.

Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

- Costs incurred in advance of an incident necessary to prepare for evacuations in threatened areas. Costs may include mobilization of ambulances and other transport equipment. Contracts for staging ambulance services must be part of the State, Territorial, Tribal, or regional evacuation plan. Costs of staging ambulances are eligible even if the incident does not impact the area normally served by those ambulances. PA funding for activating, staging, and using ambulance services ends when any of the following occurs:
    - FEMA, and the State, Territorial, or Tribal government, determines that the incident did not impact the area where it staged ambulances;
    - Evacuation and return of medical patients and individuals with disabilities or access and functional needs is complete; or
    - The immediate threat caused by the incident has been eliminated and the demand for services has returned to normal operation levels.

    FEMA does not provide PA funding for ambulance services that are covered by private insurance, Medicare, Medicaid, or a pre-existing private payment agreement.[235]

2. Sheltering

FEMA provides PA funding to SLTT government Applicants for costs related to emergency sheltering for survivors. Typically, such sheltering occurs in facilities with large open spaces, such as schools, churches, community centers, armories, or other similar facilities. FEMA refers to these shelters as congregate shelters.

Eligible costs related to sheltering include, but are not limited to, the items listed below, as necessary based on the type of shelter and the specific needs of the shelterees. If any of the items listed are donated, including labor, the Applicant may offset the non-Federal share of its eligible Emergency Work Projects in accordance with Chapter 6:XIV. *Donated Resources*. Sheltering and caring for household pets is only eligible while the pet owner is in an emergency shelter.

(a) Shelter Facility Costs

Eligible shelter facility costs include, but are not limited to:

- Facility lease or rent, including space for food preparation;
- Utilities such as power, water, and telephone;
- Minor facility modifications if necessary to make the facility habitable, compliant with the Americans with Disabilities Act (ADA), functional as a childcare facility, or functional as an animal shelter;
- Restoration to return the facility to its condition prior to use;
- Generator costs; and
- Secure storage space for medical supplies.

If an eligible SLTT government Applicant owns or leases the shelter facility, and a volunteer agency operates the shelter, the facility costs described above are eligible. However, the labor

[235] Ibid.

costs for the volunteer agency's workers are ineligible (except as a donated resource in accordance with the criteria in Chapter 6:XIV. *Donated Resources*).

(b) Shelter Staff Costs

Eligible shelter staff costs include, but are not limited to:

- Medical staff;
- Personal assistance service staff;
- Veterinary and animal care staff;
- Public Information Officer;
- Social workers;
- Food service workers;
- Custodial and facilities staff; and
- National Guard personnel (See Chapter 6:XI. *National Guard*).

(c) Shelter Supplies and Commodities

Eligible shelter supplies and commodities include, but are not limited to:

- Hot and cold meals, snacks, beverages, and related supplies for survivors;
- Cooking and serving supplies;
- Food, water, and bowls for household pets and service and assistance animals;
- Durable medical equipment;
- Consumable medical supplies;
- Medication for animal decontamination and parasite control;
- Infant formula, baby food, and diapers;
- Refrigerators, microwaves, and crock pots;
- Cots, cribs, linens, blankets, pillows, tables, and chairs;
- Crates, cages, leashes, and animal transport carriers;
- Personal hygiene kits with items such as shampoo, soap, toothpaste, a toothbrush, towels, and washcloths;
- Animal cleaning tables and supplies;
- Televisions or radios – one per 50 shelterees;
- Basic cable service;
- Computers – one per 25 shelterees;
- Internet service, including Wi-Fi;
- Washers and dryers – one of each per 50 shelterees; and
- Toys and books.

(d) Shelter Services

Shelter services are only eligible for the time the facility is actively used to shelter survivors. Eligible shelter services include, but are not limited to:

- Shelter management;
- Supervision of paid and volunteer staff;
- Cleaning the shelter, linens, and animal crates;
- Shelter safety and security;

- Use of equipment, such as ambulances, buses, trucks, or other vehicles, to provide sheltering support;
- Phone banks for survivors;
- Care for survivors with disabilities or access and functional needs, including the provision of the following personal assistance services:
    - Grooming, eating, walking, bathing, toileting, dressing, and undressing;
    - Transferring (e.g., movement between a cot and wheelchair or wheelchair to restroom facilities);
    - Maintaining health and safety;
    - Assistance with self-administering medications; and
    - Communicating or accessing programs and services;
- Emergency medical and veterinary services for sheltered survivors, household pets, and service and assistance animals, including:
    - Emergency and immediate life stabilizing care, including necessary prescriptions (not to exceed 30-day supply);
    - Triage, medically necessary tests, diagnosis, treatment, stabilization, and monitoring;
    - First-aid assessment;
    - Provision of first aid and health information;
    - Care for evacuees with chronic conditions;
    - Administering vaccinations to shelterees and workers for transmissible or contagious diseases, including, but not limited to, tetanus and hepatitis;
    - Administering vaccinations to household pets, and service and assistance animals, for transmissible or contagious diseases, including, but not limited to, Bordetella (kennel cough). The vaccinations need to be effective while the animal is in the shelter;
    - Medical waste disposal;
    - Mental-health care;
    - Outpatient costs for sheltered survivors requiring emergency life-sustaining treatment not available at the shelter for the period of time that a survivor is housed in the shelter. Eligible outpatient services are limited to:
        - Physician services in a hospital outpatient department, urgent care center, or physician's office;
        - Related outpatient hospital services and supplies, including X-rays, laboratory and pathology services, and machine diagnostic tests; and
        - Local professional transport services to and from the nearest hospital equipped to adequately treat the emergency.
- Sheltering self-evacuees (self-evacuee transportation costs are ineligible); and
- Costs paid to the American Red Cross (ARC) or other Non-governmental Organizations (NGO) to operate shelters under a written agreement (costs that ARC or other NGOs incur under their own organizational mission – i.e., independent of any Federal or SLTT request – are ineligible for reimbursement).

(e) Non-congregate Sheltering

Generally, FEMA does not provide PA funding for emergency sheltering in non-congregate environments, which are locations where each individual or household has living space that offers some level of privacy (e.g., hotels, motels, casinos, dormitories, retreat camps, etc.). In limited circumstances, such as when congregate shelters are not available or sufficient, FEMA may reimburse costs related to emergency sheltering provided in non-congregate environments. FEMA's Assistant Administrator for Recovery has the authority to approve this policy exception. The Applicant must submit a request for PA funding for costs related to emergency, non-congregate sheltering and obtain FEMA approval prior to sheltering survivors in non-congregate facilities. At a minimum, the Applicant should include the following information in its request:

- Justification for the necessity of non-congregate sheltering;
- Whether the State, Territorial, or Tribal government has requested Transitional Sheltering Assistance;
- The type of non-congregate sheltering available and which type the Applicant intends to utilize;
- An analysis of the available options with the associated costs of each option; and
- The timeframe requested (i.e., date of activation and length of time).[236]

Transitional Sheltering Assistance Program

FEMA's Transitional Sheltering Assistance (TSA) is a type of short-term non-congregate sheltering assistance provided as Direct Federal Assistance. The intent of TSA is to provide temporary sheltering for survivors transitioning from emergency shelters to temporary or permanent housing solutions. Additional information is available in FEMA's Individual Assistance Program and Policy Guide at www.fema.gov/media-library/assets/documents/177489.

FEMA limits any approval to that which is reasonable and necessary to address the needs of the incident (usually no more than 30 days). FEMA determines the eligible costs based on the contractual agreement, including reimbursement for repairing damage if it is the Applicant's legal responsibility based on the agreement. The Applicant must obtain FEMA approval for any time extensions, which should include a detailed justification for the continued need and a revised analysis of options, including the costs for each option.

If FEMA approves the request, the Recipient must provide sufficient data and documentation to establish eligibility (including the need for non-congregate sheltering resulting from the disaster, reasonableness, and costs). Sufficient documentation includes:

- The number of non-congregate shelterees:
  - By age groups 0-2, 3-6, 7-12, 13-17, 18-21, 22-65, and 66+;
  - With disabilities or access and functional needs;
  - Registered for assistance from FEMA's IA Programs; and
  - Referred to State, Territorial, Tribal, or non-governmental organization programs for assistance;
- Number of household pets, and assistance and service animals sheltered, and the type of shelter provided (e.g., stand alone, co-located, or co-habitational;
- Length of stay per "household unit"; and

[236] 44 C.F.R. §§ 206.225(a)(2) and 206.202(c) and (d).

- Number of meals and other services provided.

As with any activity, lack of full documentation may result in FEMA determining that some or all of the costs are ineligible.

3. Childcare Services

FEMA reimburses SLTT governments for the cost of providing licensed childcare services to support sheltered populations. This includes the cost of the labor, facility, supplies, and commodities. Additionally, FEMA may provide PA funding for the cost of childcare services that the eligible Applicant provides to other survivors, and beyond the period of emergency sheltering, with certification that temporary childcare is necessary to meet immediate threats to life, public health and safety, or property.

Childcare includes services such as:

- Day care for children; and
- Before- and after-school care.

The Applicant may provide these services within a shelter facility or in a separate facility, as appropriate. FEMA PA and IA staff coordinate to ensure no duplication with IHP assistance.

4. Host-State or Host-Tribe Evacuation and Sheltering

If the impacted State or Tribe (Impact-State or Impact-Tribe)[237] has evacuation and sheltering needs beyond its ability to address within its jurisdictional area, it may request assistance either from another State or Tribal government (Host-State or Host-Tribe)[238] through mutual aid agreements such as EMAC, or from FEMA.

If the Impact-State/Tribe requests assistance directly from another State or Tribal government, FEMA reimburses costs based on the mutual aid agreement as described in Chapter 6:IX. *Mutual Aid*. FEMA may also provide PA funding to the Host-State/Tribe directly, even if the Impact-State/Tribe already requested assistance directly from that Host-State/Tribe, provided that:

- The Impact-State/Tribe requested the assistance;
- The Host-State/Tribe agrees to accept evacuees based on need—without restriction;
- An authorized official from the Host-State/Tribe transmits a written agreement to FEMA; and

[237] Impact-State or Impact-Tribe means the State or Tribal Government for which the President declared an Emergency or Major Disaster and requested FEMA assistance because of a need to evacuate and/or shelter affected individuals outside the State.
[238] Host-State or Host-Tribe means a State or Tribal Government that by agreement with FEMA provides sheltering or evacuation support to evacuees from an Impact-State or Impact-Tribe.

- The Governor or Tribal Chief Executive of the Host-State/Tribe signs the FEMA/Host-State or FEMA/Host-Tribe Agreement pursuant to the terms and conditions in 44 C.F.R. § 206.44, FEMA-State Agreements, to establish the Host-State/Tribe as the Recipient.[239]

If the Impact-State/Tribe requests assistance from FEMA, FEMA determines whether potential Host-States/Tribes have sufficient capability to meet some or all of the sheltering and evacuation needs of the Impact-State/Tribe. If FEMA determines a Host-State/Tribe has sufficient capability and the Host-State/Tribe meets the three conditions described above, FEMA provides PA funding to the Host-State/Tribe directly.[240]

When FEMA provides PA funding directly to the Host-State/Tribe, FEMA reimburses 100 percent of the Host-State/Tribe's eligible costs, including straight-time and benefits of the Host-State/Tribe's permanent employees[241] so that it does not have any out-of-pocket costs. In these cases, the Impact-State/Tribe is responsible for the non-Federal cost share and must subsequently reimburse FEMA for the non-Federal cost share of the eligible costs incurred by the Host-State/Tribe. The non-Federal cost share is based on the Category B cost-share amount designated in the declaration. The Impact-State/Tribe cannot offset its non-federal cost share with the Host-State/Tribe's volunteer labor.

In addition to the other eligible evacuation and sheltering costs described in this chapter, FEMA also reimburses the Host-State/Tribe for the following:

- Straight-time and benefits of entities' employees that provide assistance under a mutual aid agreement or a contract with the Host-State/Tribe such as a local government or PNP;
- Costs to provide the requested shelter capacity, even if the shelter was underused or not used at all;
- Costs related to arrest and incarceration of evacuees who commit unlawful acts in the Host-State/Tribe congregate shelter, including costs incurred by on-duty law enforcement officers in order to detain, take into custody, or make an arrest (costs of chemical tests, processing, charging, booking, and holding such persons are ineligible costs). Costs to transport a detainee back to the shelter is eligible if the individual was not charged;
- When patients in hospitals in the Impact-State/Tribe are evacuated, transported, and admitted into hospitals in the Host-State/Tribe through mission assignment with HHS, and the patients are treated and discharged but require follow-on care while awaiting transport, and shelters are not available, the costs that the Host-State/Tribe's hospital incurs for hotel rooms during patients' follow-on care until the patients can be transported back to the Impact-State/Tribe, provided that Medicare, Medicaid, or private insurance does not cover these costs;
- Bus or shuttle transport to pick up evacuees at the airport, train station, or bus terminal when the expected plane, train, or bus is re-routed, canceled, or rescheduled;
- Ambulance costs for hospital-to-hospital transfers, provided it is a transfer within the Host-State/Tribe;
- When the Impact-State/Tribe determines that it is safe for re-entry, it coordinates with the Host-State/Tribe and FEMA to return evacuees, household pets, and service and

[239] 44 C.F.R. § 206.202(f)(1)(i).
[240] 44 C.F.R. § 206.208(c)(3).
[241] 44 C.F.R. § 206.202(f)(1)(ii).

assistance animals to the Impact-State/Tribe by air, rail, or bus. Return transportation costs are eligible along with food, water, and security during transport;
- Return transportation costs for family members of the Impact-State/Tribe evacuee who was admitted to a hospital after the congregate shelters close;
- When evacuees are discharged from a hospital after all congregate shelters have closed and transportation cannot be arranged for departure on the same day discharged, FEMA reimburses up to 5 nights of hotel lodging while awaiting return transport; and
- FEMA reimburses a State agency from the Impact-State/Tribe for transportation costs and related expenses to transport deceased evacuees and accompanying family members to the Impact-State/Tribe. The cost of the State/Tribe-mandated embalming or cremation of the body prior to return are also eligible.

The Host-State/Tribe must determine whether any ambulance or medical service costs are covered by a patient's private insurance, Medicare, Medicaid, or a pre-existing private payment agreement as FEMA deducts this amount from the Host-State/Tribe's eligible cost.

Fees that the Host-State/Tribe waives for the use of State parks by self-evacuees with recreational vehicles (RVs) are ineligible. Additionally, purchase and distribution of gas cards, bus passes, cash vouchers, debit cards, food vouchers, or direct payments to evacuees are ineligible.

P. Infectious Disease Incident

The HHS Centers for Disease Control and Prevention (CDC) has primary authority to enable support and assistance to SLTT governments in response to an infectious disease incident. FEMA may provide assistance for the rescue, evacuation, and movement of persons; movement of supplies; and care, shelter, and other essential needs of affected human populations. Any assistance provided by FEMA in response to an infectious disease incident is done in coordination with the CDC. The Office of Response and Recovery Fact Sheet FP 104-009-001, *Infectious Disease Event*, provides additional details.[242]

Q. Mosquito Abatement

Mosquito abatement measures may be eligible when a SLTT government public health official validates in writing that a mosquito population poses a specific health threat as discussed further in Appendix G: *Mosquito Abatement*. FEMA consults with the CDC to determine the eligibility of mosquito abatement activities. FEMA only provides PA funding for the increased cost of mosquito abatement. This is the amount that exceeds the average amount based on the last 3 years of expenses for the same period.

R. Residential Electrical Meter Repair

In rare cases, to reduce the number of survivors needing shelter, FEMA may provide limited PA funding to a SLTT government to repair residential electrical meters. To receive PA funding, the SLTT government must:

- ☐ Issue a finding of an immediate threat to safety due to loss of power caused by damaged meters or weather heads;

[242] www.fema.gov/media-library/assets/documents/99710.

- ☐ Request participation in this program; and
- ☐ Receive FEMA approval for each identified property.

Only residential properties are eligible for this program. Commercial properties, including apartment complexes, are ineligible.

If approved, the applicable SLTT government must:

- ☐ Obtain a signed right-of-entry from each residential property owner;
- ☐ Take reasonable measures to document any known insurance proceeds;
- ☐ Contract with licensed electricians to perform electrical meter repair;
- ☐ Coordinate the work with the property owner, the power company, and the contracted electricians; and
- ☐ Be responsible for payment of the non-Federal share.

Eligible work is limited to that associated with repairing damage to items otherwise installed and maintained by a homeowner's electrician, including the weather head, service cable, and meter socket.

FEMA generally provides PA funding up to $800 per meter per residential dwelling. This amount includes equipment, materials, labor, and inspection fees to restore the meter to current local codes. It is also inclusive of limited debris clearance when necessary to access the damaged meter or weather head. Removal and disposal of the debris is ineligible. Eligible work is limited to that completed within 30 days from the declaration date unless extended by FEMA.

FEMA does not provide PA funding for repair costs if it is not safe to restore power to the residence or if other impacts would restrict the dwelling from being habitable even after power restoration.

FEMA PA and IA staff coordinate closely to ensure FEMA does not fund the same work under both programs.

S. Safety Inspections

Post-incident safety inspections for public and private facilities are eligible, as well as posting appropriate placards (e.g., "red-tagging" a building that is unsafe).

The specific purpose of the inspection must be to determine whether the facility is safe for entry, occupancy, and lawful use. The Applicant must clearly substantiate that the purpose of the inspection was for safety and not to assess damage. Building inspections are ineligible if the purpose of the inspection is to:

- Determine whether the building is Substantially Damaged for the purpose of compliance with the community's floodplain management ordinance;
- Determine whether the building needs to be elevated or relocated, in accordance with the community's floodplain management ordinance; or
- Ensure that repairs are completed in accordance with the community's building code or standard.

T. Animal Carcasses

Removal and disposal of animal carcasses, including interim processing,[243] is eligible. If the removal and disposal is conducted as part of the overall debris removal operations, the work may be funded as Category A.

FEMA may require certification from the SLTT government health department, HHS, or the U.S. Department of Agriculture (USDA) that a threat to public health and safety exists.

When few in number, smaller animal carcasses (e.g., rodents, skunks, or possums) do not usually pose an immediate threat to public health or safety. Removal and disposal of these carcasses is ineligible.

FEMA does not provide PA funding when another Federal agency has authority to provide assistance for carcass removal and disposal. NRCS has authority to remove animal carcasses and to provide technical assistance to the Applicant under its EWP program. The USDA's Farm Service Agency may provide assistance for farmland debris cleanup. The EPA and USCG have authority to provide technical assistance and to remove animal carcasses contaminated with oil, hazardous substances, pollutants, or contaminants.[244]

U. Demolition of Private Structures

Emergency demolition of structures located on private property may be eligible when partial or complete collapse is imminent, and that collapse poses an immediate threat to the general public.

In some instances, restricting public access to an unsafe structure and the surrounding area, such as securing the area with a fence, is sufficient to alleviate the immediate threat and is more cost-effective than demolition. In these cases, demolition is ineligible.

If a structure is condemned prior to the incident, emergency protective measures related to that structure are ineligible.

FEMA reviews the Applicant's demolition process for compliance with all applicable EHP laws, regulations, and EOs.

1. Conditions for Eligibility

For demolition to be eligible, the Applicant must:

- Certify that the structures are unsafe and pose an immediate threat to lives or public health and safety;
- Provide documentation to confirm its legal authority and responsibility to enter private property and demolish privately-owned unsafe structures. This includes:
    - Citation of the law, ordinance, code, or emergency powers for which it is exercising its legal authority to demolish privately-owned unsafe structures. The authority cited must be applicable to the structural condition representing the immediate threat and not merely the Applicant's uniform level of services.

[243] Interim processing may include burning, incinerating, rendering, mounding, composting, or other pre-processing activities.
[244] See Recovery Policy 9523.8, *Mission Assignments for ESF#10*, for discussion on EPA and USCG authority with respect to removal of hazardous waste: www.fema.gov/media-library/assets/documents/136089.

  - Confirmation that a legally authorized official of the Applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area in order to demolish privately-owned unsafe structures and remove the resulting debris; and
- Indemnify the Federal Government and its employees, agents, and contractors from any claims arising from the demolition of privately-owned unsafe structures and removal of the resulting debris.

Before FEMA will provide PA funding, the Applicant must provide confirmation that it satisfied all legal processes and obtained permission requirements from the property owners (rights-of-entry) and agreements to indemnify and hold harmless the Federal Government. Additionally, the Applicant must provide documentation to support that it obtained all necessary permits and complied with EHP requirements.

2. Commercially Owned Structures

Demolition of structures owned by commercial enterprises, including businesses, apartments, condominiums, and mobile homes in commercial trailer parks, are generally ineligible as it is expected that the commercial enterprises retain insurance that cover the cost of demolition. In very limited, extraordinary circumstances, FEMA may provide an exception. In such cases, the Applicant must meet the requirements of Chapter 7:I.G. *Debris Removal from Private Property*.

3. Eligible Work

If FEMA approves the demolition of private structures, eligible work associated with the demolition includes, but is not limited to:

- Capping wells;
- Pumping and capping septic tanks;
- Filling open below-grade structures, such as basements and swimming pools;
- Testing for hazardous materials;
- Securing utilities;
- Obtaining permits and licenses; and
- Performing title searches.

Fees for permits, licenses, and titles issued directly by the Applicant are ineligible unless the Applicant demonstrates that the fees are above and beyond its normal administrative costs. Overtime labor directly related to issuing these permits, licenses, and titles for facilities that are eligible for demolition is eligible.

The following work is also eligible and may be funded as Category A if the removal and disposal is conducted as part of the overall debris removal operations:

- Removing demolition debris, including personal effects; and
- Removing hazardous materials, such as asbestos and household hazardous waste.

The Applicant should work with the property owner to pursue and recover insurance proceeds and credit FEMA the Federal share of any insurance proceeds recovered. In some circumstances, the property owner may be eligible for IA funding. FEMA PA and IA staff coordinate closely to ensure FEMA does not fund the same work under both programs.

4. Ineligible Work

Ineligible work associated with the demolition of private structures includes, but is not limited to:

- Removal or covering of concrete pads and driveways except for structures in a FEMA-funded buyout program; and
- Removal of slabs or foundations that do not present a health or safety hazard, except for structures in a FEMA-funded buyout program through the HMGP (the removal of Substantially Damaged structures and associated facilities acquired through HMGP may be eligible as Category A, Debris Removal).

V. Temporary Relocation of Essential Services

If the Applicant provides essential community services at a facility that is unsafe, inaccessible, or destroyed as a result of the incident, temporarily relocation of these services to another facility is eligible.[245] Essential community services are those services of a governmental nature that are necessary to save lives, protect property and the public, and preserve the proper function and health of the community at large. These services differ from the list of eligible PNP essential social services. FEMA evaluates the criticality of the service and safety of the facility to determine the need for temporary relocation. FEMA does not incorporate funds from temporary facilities into fixed cost projects.

1. Eligible for Temporary Relocation:

Essential community services provided by an eligible Applicant are eligible to be relocated. The following services are considered essential community services (these differ from the list of PNP essential social services):

- Education;
- Election and polling;
- Emergency, including police, fire, and rescue;
- Homeless and domestic violence shelters;
- Emergency medical care;
- Prison;
- Utility; and
- Other facilities that provide public health and safety services of a governmental nature.

Services provided in administrative and support facilities essential to the provision of the essential community service are also eligible for relocation. These include administration buildings, student housing, hospital and prison laundry and cooking facilities, parking, and storage if items are needed on-site. Athletic fields and student unions are not considered essential administrative or support services and are ineligible.

If the Applicant provides the service at a leased, private facility prior to the incident, the service is still eligible to be relocated.

[245] Stafford Act § 403(a)(3)(D), 42 U.S.C. § 5170b.

2. Ineligible for Temporary Relocation

Facilities that do not provide essential community services are ineligible for temporary relocation. These include facilities and services such as museums, zoos, community centers, shelter workshops, performing arts centers, recreation and parking, athletic stadiums, houses of worship, housing and residential services, custodial care, assisted living, senior citizen centers, alcohol and drug rehabilitation, childcare, libraries, research and warehouse facilities, burial, vocational, academic, athletic, political training, and student union buildings.

3. Determining Eligibility of Temporary Relocation

FEMA determines the eligibility of relocating services to another facility based on the safety of the damaged facility as follows:

- If the facility can be made usable with the performance of emergency protective measures or minor repairs, a temporary facility may not be eligible.
- If the damage is to the extent that it cannot be occupied safely, and restoration cannot be completed without suspending operations of the facility for an unacceptable period of time, then a temporary facility may be eligible.
- If the facility is not damaged but lacks a critical utility or operational item, such as potable water, electricity, or road access, and a temporary facility will restore services to the community before the restoration of the disrupted critical utility or operational item at the current site, then a temporary facility may be eligible.

The capacity of the temporary facility must not exceed the pre-disaster capacity of the facility that housed the displaced services. The Applicant must use the temporary facility to provide the eligible service to the same extent and manner as was provided prior to the incident.

Relocation to a site that requires ground disturbance or alteration of an existing property requires EHP review before the Applicant implements the action.

FEMA does not require the Applicant to obtain and maintain insurance for temporary facilities.

If the Applicant has a facility that does not meet eligibility requirements for temporary relocation and the facility's damage is to such an extent that the contents are at risk, FEMA may provide PA funding for temporary space to store the contents as an emergency protective measure if the space is:

- Limited to an area necessary to house the contents;
- Used solely for storage; and
- Not intended for public access, alternate office space, exhibits, or other purposes.

FEMA is not responsible for damage that may occur to contents in temporary storage.

4. Lease, Purchase, or Construct

When deciding whether to rent or purchase space and equipment, the Applicant should choose the most economical option that meets its needs. The Applicant must provide FEMA with a cost analysis,[246] which should include at least three options with cost estimates based on the timeline to restore the original facility. Cost estimates for leasing a facility must account for the entire timeline of the project. FEMA generally reimburses the least costly option of leasing,

[246] 2 C.F.R. § 200.318(d).

purchasing, or constructing a temporary facility. However, FEMA also considers whether the least costly option is practical when determining eligibility (e.g., if the least costly option for a temporary school is to lease a building in another county, and the next least costly option is to install modular buildings on the current campus, FEMA may reimburse the cost of the modular buildings).

If the Applicant relocates a service from a facility it owns, the lease costs of a temporary facility are eligible if leasing is the least costly option. If the Applicant was leasing the damaged facility and had to temporarily relocate to another leased facility, the increase in rent is eligible.

Purchasing or constructing a temporary facility is eligible if FEMA confirms that it is the least costly option. With exception of modular or manufactured units, the Applicant must obtain FEMA approval prior to purchasing or constructing the facility.

5. Safe Rooms for Temporary School Facilities

Funding for accessible safe rooms as part of a temporary school facility may be eligible if the damaged school contained a safe room or other space that served as a storm shelter and there are no other cost-effective, reasonable alternatives available to address the safety needs of the students and faculty. If approved, the safe room capacity is based on student population and the number of faculty who are expected to use the temporary school facility. The capacity of the safe room cannot exceed the pre-disaster capacity of the safe room in the damaged school. The safe room should be available no later than the opening day of classes at the temporary facility.

If the Applicant wishes to seek funding for a safe room as part of a temporary school facility, it must obtain prior approval from FEMA. The request needs to include:

- A description of the safe room or safe space that was used as a storm shelter prior to the incident;
- The population of students and faculty that need access to the safe room;
- Verification that no other cost-effective reasonable alternatives are within proximity that can be used as a safe space for the school population; and
- An indication that the Applicant will have the safe room installed and operational when school resumes and students occupy the temporary classroom space.

Safe rooms provided as part of a temporary school facility must comply with the requirements of *Safe Rooms for Tornadoes and Hurricanes, Guidance for Community and Residential Safe Rooms* (FEMA P-361).[247]

The timeframe for providing PA funding for the temporary safe room space coincides with the approved timeframe for providing PA funding for the temporary school facility.

6. Temporary Relocation Costs

Eligible work or costs associated with the provision of temporary facilities include, but are not limited to:

- Rental or purchase of equipment necessary to continue the services in the temporary facility;
- Reasonable alterations of the temporary facility, if required to make the space functional based on the pre-disaster use of the damaged facility;

[247] www.fema.gov/media-library/assets/documents/3140.

- Restoration of the temporary facility to its pre-disaster condition when no longer needed
- Moving expenses to and from the temporary facility;
- Minimal life-safety or other building upgrades required by an applicable code or standard in effect at the time the temporary facility is purchased or leased; and
- Public outreach and messaging costs necessary to inform the public that the service will temporarily be provided at a different location.

FEMA does not provide PA funding for utility, maintenance, or operating costs in a temporary facility, even if these costs increase.

7. Time Limitations

The regulatory time limitation for temporary facilities (Emergency Work) is 6 months from the declaration date.[248]

Depending on the extent of damage to the facility, the Applicant may be unable to restore the facility to its pre-disaster design and function within 6 months. Normally, the Recipient has the authority to extend the deadline for Emergency Work for up to 6 additional months.[249] However, for temporary facilities, only FEMA has authority to approve any time extensions to the project deadline.

FEMA considers the timeframe necessary to restore the damaged facility when evaluating time extensions for temporary facilities. If the Applicant requests funding for a temporary facility and knows at that time that the restoration of the original facility will exceed 6 months, FEMA may approve additional time and funding up to 12 months. If the Applicant needs additional time beyond this 12-month deadline, it must submit a written time extension request that includes the status of work and a timeline for completion.

FEMA only approves additional time if the Applicant begins construction on the damaged facility within 12 months of the declaration date, unless circumstances beyond the control of the Applicant prevented the start of construction within this 12-month timeframe.

(a) Improved Project

If FEMA approves an Improved Project for a facility for which it also approved temporary relocation of the services to a temporary facility, the temporary facility is only eligible for PA funding for the estimated amount of time necessary to restore the facility to its pre-disaster design and function. If the actual time to restore the facility with the improvements extends beyond this timeframe and causes the Applicant to continue its use of the temporary facility, FEMA does not reimburse any cost associated with that continued use. However, FEMA may reimburse costs associated with relocating its services back into the facility as part of the approved temporary facility project.

(b) Alternate Project

If FEMA approves an Alternate Project for a facility for which it also approved temporary relocation of the services to a temporary facility, FEMA does not reimburse any temporary facility costs incurred after the date the Applicant requests that Alternate Project.

[248] 44 C.F.R. § 206.204(c)(1).
[249] 44 C.F.R. § 206.204(c)(2)(ii).

(c) Alternative Procedures Project

If FEMA approves an Alternative Procedures Project for a facility for which it also approved temporary relocation of the services to a temporary facility, continued PA funding for the temporary facility is dependent upon the SOW of the Alternative Procedures Project.

8. Disposition Requirements

If the Applicant purchased or constructed a temporary facility, it must return to FEMA the Federal share of the equity in the facility. The Applicant must report the equity to FEMA when the approved deadline has expired or when the facility is no longer needed for the authorized purpose, whichever occurs first.

If FEMA only funded a portion of the cost of the facility, the Applicant must return to FEMA the Federal share of FEMA's proportionate equity in the facility. The amount due FEMA is computed by applying FEMA's percentage of participation in the cost of the purchase or construction to the fair market value or sale proceeds, taking into consideration reasonable out-of-pocket costs related to the sale.

The Applicant may either retain the facility or sell it. If the Applicant disposes of real property (land or structures) acquired with PA funding and acquires replacement real property using funds from the same PA project, it may use the net proceeds of the sale to offset the cost of the replacement property.

W. Snow-Related Activities

When the President declares an incident as a Snowstorm or specifically authorizes snow assistance in a declaration for a Severe Winter Storm, FEMA provides PA funding for impacts related to snow, but the assistance is limited.[250] See Appendix H: *Snow Assistance*, for detailed information.

1. Limited Time Period

Snow-related activities are eligible for a continuous 48-hour period to address the most critical emergency needs.[251] Each Applicant designates the beginning of its 48-hour period. However, a State or Territorial agency that conducts snow-related activities in multiple locations throughout the State or Territory, such as a Department of Transportation, may use different 48-hour periods for different locations.

Once FEMA approves a project for the Applicant's designated 48-hour period, the Applicant cannot change its selected period.

If the Applicant awards a contract for periods greater than the 48-hour period, PA funding is limited to the costs incurred during the 48-hour period.

The FEMA Assistant Administrator of the Recovery Directorate may extend the eligible period by 24 hours in counties, parishes, or Tribal government areas where the snowfall exceeds the historical record snowfall by at least 50 percent.

[250] 44 C.F.R. § 206.227.
[251] 44 C.F.R. § 206.227.

2. Eligible Work

Eligible work includes:

- Snow-related activities (for limited time as discussed above):
  - Snow removal;
  - Snow dumps;
  - De-icing;
  - Salting; and
  - Sanding of roads and other eligible facilities.
- Other emergency protective measures (not restricted to the limited time) including, but not limited to, search and rescue and sheltering.

Limited snow-related activities necessary to carry out emergency protective measures, such as clearing snow in the *immediate* area of a downed power line, are eligible outside of the limited time period and in counties declared but not designated for snow assistance.

For Severe Winter Storm Declarations that do not specifically authorize snow assistance, FEMA only provides PA funding for limited snow-related activities that are necessary to perform otherwise eligible work. For example, snow removal necessary to repair downed power lines is eligible, while normal snow removal from roads (including salting and sanding) is ineligible.

X. Emergency Repair or Stabilization

Emergency repair or stabilization of an eligible facility is eligible as Emergency Work if it eliminates or lessens an immediate threat.[252] Work performed under an exigent circumstance that restores the pre-disaster design and function of the facility in accordance with codes and standards is Permanent Work,[253] not Emergency Work.

Emergency repair of a facility is ineligible if another Federal agency has the specific authority to provide assistance for the facility (even if the repair is temporary),[254] such as for:

- Federal-Aid highways – Federal Highway Administration (FHWA); or
- Flood control works – USACE and NRCS.

For Tribal governments specifically, although the Bureau of Indian Affairs' (BIA) or FHWA may have authority to provide temporary emergency repairs of Tribal roads, such roads may be eligible for PA funding provided the Tribal Government does not receive funding from BIA or FHWA for the work.

1. Operation Blue Roof (DFA Only)

Operation Blue Roof provides homeowners with plastic sheeting to cover damaged roofs until arrangements can be made for permanent repairs. The purpose of Operation Blue Roof is to protect property, reduce temporary housing costs, and allows residents to remain in their homes while recovering from the incident. Therefore, only dwellings that can be safely occupied after

[252] 44 C.F.R. § 206.201(b).
[253] 44 C.F.R. § 206.201(j).
[254] 44 C.F.R. § 206.226(a).

blue roof installation are eligible. The costs of these services are ineligible for reimbursement. However, FEMA may provide DFA for these services.[255]

2. Slope Stabilization

If a landslide or other slope instability is triggered by the incident and poses an immediate threat to life, public health and safety, or improved public or private property, emergency protective measures to stabilize the slope may be eligible.

FEMA only provides PA funding for the least costly option necessary to alleviate the threat. FEMA limits eligible stabilization measures to the area of the immediate threat, not the entire slope. Work must be reasonable relative to the size and scope of the area of instability.

FEMA may authorize funding for post-disaster inspections and limited geotechnical investigations to determine if the instability creates an unsafe condition that poses an immediate threat.

Eligible emergency protective measures include, but are not limited to:

- Emergency drainage measures;
- Emergency ground protection to better stabilize the mass (rip rap, sheeting);
- Partial excavation at the head of a sliding mass to reduce its driving force;
- Backfilling or buttressing at the toe of a sliding mass using measures such as gabions, rock toes, cribwalls, binwalls, and soldier pile walls; and
- Installation of barriers to redirect debris flow.

3. Mold Remediation

The incident may cause facilities to be inundated or exposed to wet and humid weather conditions for extended periods of time. These conditions may cause growth and spreading of mold in structures and on contents, causing threats to public health and increasing the repair cost.

The following remediation activities may be eligible as emergency protective measures:

- Wet vacuuming, damp wiping, or vacuuming with High-Efficiency Particulate Air (HEPA) equipment of the interior space;
- Removal of contaminated gypsum board, plaster (or similar wall finishes), carpet or floor finishes, and ceilings or permanent light fixtures; and
- Cleaning of contaminated heating and ventilation (including ductwork), plumbing, and air conditioning systems or other mechanical equipment.

Pre-remediation mold sampling is only eligible when the sampling reveals the presence of mold. Post-remediation sampling is eligible to confirm that remediation is complete.

The Applicant may use a variety of mold cleanup methods to remediate mold damage based on the extent of damage and type of damaged material. Appendix I: *Mold Remediation*, provides information for consideration when developing a SOW for mold remediation. The Applicant must follow applicable SLTT government guidelines for mold sampling and remediation.

FEMA only provides PA funding for mold sampling performed by an indoor environmental professional, such as a Certified Industrial Hygienist, Certified Indoor Environmental

[255] See www.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/475463/temporary-roofing/ for additional information.

Consultant, or Certified Microbial Consultant. The indoor environmental professional should not be employed by the remediation company to avoid a conflict of interest. FEMA considers technical evaluations performed by licensed professionals when determining the eligibility of mold remediation.

For mold remediation to be eligible, mold must not be a result of poor facility maintenance or failure to take protective measures to prevent the spread of mold in a reasonable time after the incident. If the Applicant can document and justify why it did not take measures to prevent further contamination, or why measures taken were insufficient to prevent further damage, mold remediation may be eligible.

Examples of extenuating circumstances include:

- Disruption of power;
- Facility is underwater;
- Facility is inaccessible;
- Heating, ventilation, and air conditioning (HVAC) equipment is damaged; and
- Insufficient resources to remediate the entire facility.

FEMA evaluates whether the facility had pre-existing water infiltration conditions when determining whether mold remediation is eligible. For this evaluation, FEMA considers whether there is evidence of:

- Improperly sealed windows or exterior vents;
- Standing water against an exterior wall;
- Poorly maintained drains or gutters with rust or vegetative growth;
- Absence of rain gutters; and
- Leaking ceiling tiles.

4. Emergency Berms on Beaches

If a natural or engineered beach has eroded to a point where flooding from a 5-year storm[256] could damage improved property, cost-effective emergency protective measures on the beach that protect the improved property against damage from that 5-year storm are eligible.

Eligible measures typically include the construction of emergency sand berms to protect against additional damage from a 5-year storm. Emergency sand berms are not intended to permanently restore the beach; they are intended only to provide protection from immediate threats. The Applicant may construct emergency berms with sand recovered from the beach or with imported sand. If the Applicant constructs the berms with imported sand, FEMA will only provide PA funding if the sand is from a source that meets applicable environmental regulations and one of the following circumstances exists:

- Recoverable quantities are insufficient; or
- SLTT government regulations prohibit placement of the recovered sand.

To show that a 5-year storm could damage improved property, the Applicant must demonstrate that the stillwater level plus wave runup elevation as determined by computer modeling for a 5-year storm exceeds the post-incident elevation of the primary dune.

[256] 44 C.F.R. § 206.221(c). For flood incidents specifically, an immediate threat is a threat from a 5-year flood (a flood that has a 20 percent chance of occurring in any given year).

The 5-year Stillwater Level (SWL) is equal to the average water surface elevation of the rise in seawater level (surge) resulting from a 5-year storm, plus wave setup and the astronomical tide. The 5-year Total Water Level (TWL) is equal to the elevation of the wave runup predicted for a 5-year storm plus the SWL. Locations where the elevation of the post-incident profile is less than the TWL are eligible for placement of an emergency berm. See Figure 12 below.

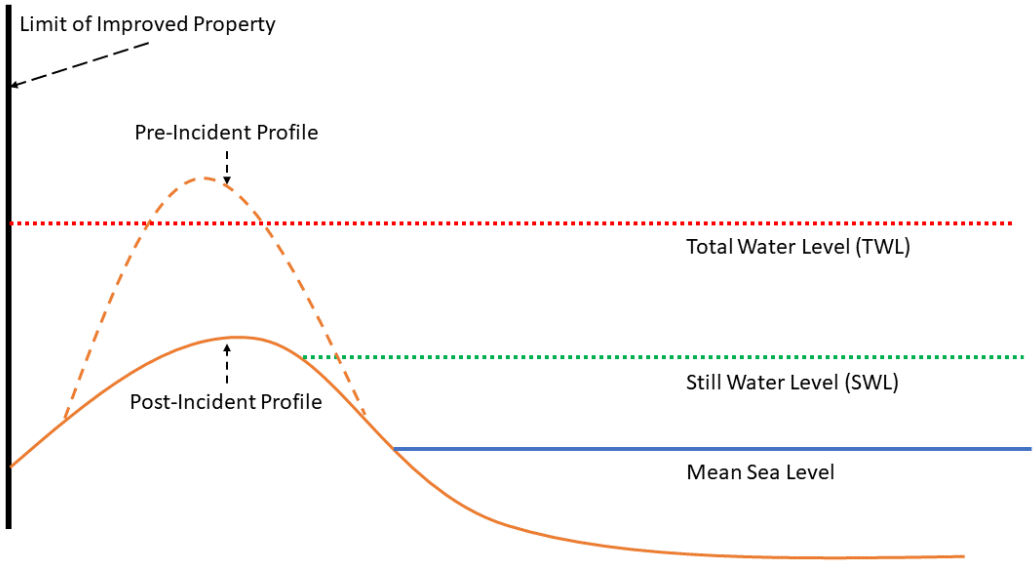


Figure 12. Determining Eligibility of Emergency Berms on Beaches

Based on the average expected erosion for a 5-year storm, FEMA only provides PA funding for emergency berms constructed with up to 6 cubic yards per linear foot of sand above the 5-year stillwater level or the berm's pre-incident profile, whichever is less. In some cases, placing sand below the 5-year stillwater level may be necessary to provide a base for berm. The placement of that sand is also eligible as part of the emergency protective measure.

Placement of dune grass on an emergency dune or berm is only eligible if it is required by permit and is an established, enforced, uniform practice that applies to the construction of all emergency berms within the Applicant's jurisdiction, regardless of the circumstance. The Applicant must include the grass placement cost in the dune or berm construction cost when evaluating cost-effectiveness. Any maintenance of the dune grass after the initial installation is ineligible.

III. Damage Caused During Performance of Emergency Work

The Applicant may damage improved property, supplies, or equipment during the performance of eligible emergency response activities or debris removal operations.

The repair of damage to public property, supplies, or equipment is eligible as part of the respective Emergency Work (Category A or B) Project[257] if the damage was:

- Due to severe conditions resulting from the incident;
- Unavoidable; and
- Not due to improper or excessive use.

Replacement of damaged crops, trees, shrubs, or other ground cover is ineligible, unless the replacement meets the criteria in Chapter 8:IX.E. *Parks, Recreational, Other (Category G)*.

For equipment damage, FEMA requires maintenance records to demonstrate that the equipment was regularly maintained and in good operational order prior to the incident, and details regarding when, where, and how the damage occurred.

Repair of damage to private property is only eligible if the above criteria is met and one of the following:

- The property is an easement and the Applicant is legally responsible for repairing the damage it causes to the easement; or
- The Applicant leased the property either for sheltering or for a temporary debris staging site, and the lease agreement establishes that the Applicant is legally responsible for the repair.

Damage caused by snow-related activities conducted outside of the authorized period, as described in Chapter 7:II.W. *Snow-Related Activities*, is ineligible.

[257] Although the repairs may be Permanent Work, FEMA includes it on the Emergency Work project as damage resulting from the emergency work.

CHAPTER 8: PERMANENT WORK ELIGIBILITY

Permanent Work (Categories C–G) is work required to restore a facility to its pre-disaster design (size and capacity) and function in accordance with applicable codes and standards.[258] Emergency repair or stabilization to eliminate or lessen an immediate threat is Emergency Work. All Permanent Work is subject to the eligibility of the facility as described in Chapter 4:II. *Facility Eligibility* and shown in Figure 13. *Permanent Work Eligibility*. This chapter provides PA Policy for Permanent Work.

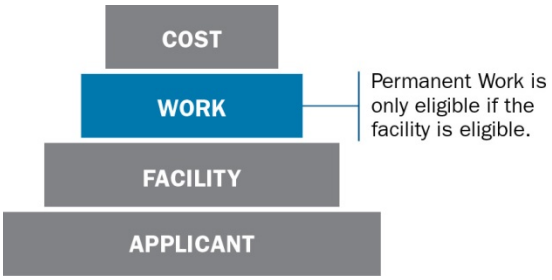


Figure 13. Permanent Work Eligibility

Pre-disaster design means the size or capacity of a facility as originally constructed or subsequently modified. It does not mean the capacity at which the Applicant was using the facility at the time of the incident if different from the most recent designed capacity.[259]

Example of Restoring to Pre-disaster Design

If a school designed for a capacity of 100 students is damaged beyond repair, the eligible funding for the replacement facility is limited to that necessary for 100 students, even if more than 100 students were attending the school prior to the incident.

Pre-disaster function is the function for which the facility was originally designed or subsequently modified. For example, if the Applicant designed and constructed an administrative building, but later altered it in accordance with applicable construction codes or standards to use as a school, the pre-disaster function would be as a school. If the facility was serving an alternate function at the time of the incident, but was not altered to provide that function, FEMA provides PA funding to restore the facility either to the original pre-disaster function, OR pre-disaster alternate function, whichever costs less.[260]

Example of Restoring to Pre-disaster Function

If the Applicant is using an office building as a storage facility at the time of an incident, and it is less costly to restore the facility as a storage facility, only those repairs necessary to restore it as a storage facility are eligible.

Any special lighting or wall and floor finishes that are typical of an office building are not necessary for a storage facility and, therefore, are ineligible.

[258] 44 C.F.R. § 206.201(j). Although this section of 44 C.F.R. does not reference function as part of the definition of Permanent Work, 44 C.F.R. § 206.203(d)(2) states that if the Applicant does not restore the function, it is an Alternate Project. See Chapter 8:VIII. *Capped Projects* for discussion on Alternate Projects.
[259] 44 C.F.R. § 206.201(k).
[260] 44 C.F.R. § 206.226(k)(1).

FEMA may approve changes to the pre-disaster design or construction method (including materials) if the changes are required due to access issues, site conditions, or to tie into existing infrastructure. The changes must not impact the capacity or function of the facility. The Applicant must show that the changes are reasonable based on the type and extent of restoration and are consistent with the Applicant's general construction practices.

In cases where ineligible damage, such as a pre-existing condition, if not repaired, may compromise repair of eligible damage, FEMA may make PA funding for repair of the eligible damage contingent upon the Applicant repairing the ineligible damage. For example, FEMA may determine that repairs to a damaged bridge deck are eligible. However, the deck cannot be repaired unless the Applicant replaces rotting timbers that support the deck.

While PA funding is always based on pre-disaster size, capacity, and function, FEMA has developed procedures under Section 428 of the Stafford Act to maximize the ability of Applicants to drive their own recovery. Under this process, Section 428 Alternative Procedures are considered for all large Permanent Work Projects. This approach standardizes a single process for the development and consideration of fixed cost estimates as the first option for all Permanent Work Projects. This ensures Applicants have awareness of the opportunities and benefits provided by the Alternative Procedures, including: flexibility in meeting post-disaster recovery needs, as opposed to being limited to rebuilding back to what existed prior to the disaster; ability to share funds across all Alternative Procedures Permanent Work Projects; ability to retain and use excess funds to reduce risk and improve future disaster operations (subject to timely closeout); and eligibility for cost-effective hazard mitigation on Replacement Projects. Applicants will be able to agree to a fixed cost estimate or choose to pursue funding under standard, actual cost procedures.

I. Environmental and Historic Preservation Considerations

The Applicant needs to make every effort to afford FEMA the opportunity to perform EHP reviews prior to starting any work that has potential to impact the environment or historic properties, including archaeological resources. This includes, but is not limited to, demolition, site preparation, and ground disturbing activities. FEMA must ensure that the project complies with appropriate EHP laws, regulations, and EOs. If the Applicant starts this work prior to FEMA's completion of the EHP review, it jeopardizes PA funding for the entire project.[261]

Permanent Work Projects that restore a damaged facility essentially to pre-disaster design are excluded from National Environmental Policy Act (NEPA) review through a statutory exclusion (STATEX).[262] All others require NEPA review. Many qualify for one of the Categorical Exclusions (CATEXs) under NEPA which apply to actions that typically have little or no impact on the environment, as long as there are no "extraordinary circumstances" as defined by DHS.[263] An example of an extraordinary circumstance is a potentially significant impact on species, habitats, historic properties, or environmentally sensitive areas protected under Federal law. If any extraordinary circumstances apply, the project does not qualify for a CATEX. Although

[261] Stafford Act § 316, 41 U.S.C. § 5159; 2 C.F.R.§ 200.300.
[262] Stafford Act § 316, 41 U.S.C. § 5159.
[263] See FEMA Instruction 108-1, Section 3.2 and DHS Instruction 023-01-001-01, Appendix A: *Environmental and Historic Preservation Compliance*.

many projects are statutorily excluded from NEPA review or covered by a CATEX, Permanent Work Projects require review for compliance with other EHP laws, regulations, and EOs.

Projects that involve changes in the location, footprint, alignment, or size of a facility may not meet a CATEX and may adversely affect or have impacts on wetlands; floodplains, flood heights, or upstream/downstream velocities; federally listed threatened and endangered species and their critical habitats; essential fish habitats; historic properties, including archaeological sites; and other environmental or historic resources. If a project does not meet a CATEX, it will require a higher level of NEPA analysis. The most common higher-level analysis is referred to as an environmental assessment (EA).[264] In rare circumstances, a project may require an environmental impact statement (EIS),[265] the highest level of analysis, which requires a much more detailed analysis than an EA. FEMA is responsible for NEPA compliance and identifying the required level of review.[266] FEMA may conduct the EA or EIS. If the Applicant chooses to conduct the EA or EIS, it must obtain FEMA approval prior to initiating the EA or EIS and submit the EA or EIS to FEMA for review and approval prior to construction. When the Applicant conducts the EA or EIS, FEMA reimburses the associated cost based on the cost share of the project.

FEMA may be required to consult with Federal, State, Territorial, and Tribal government resource agencies before the Applicant begins work. These agencies may include, but are not limited to, USFWS and NMFS for impacts to federally listed threatened and endangered species; USFWS for impacts to Coastal Barrier Resource System zones and bald or golden eagles; NMFS for impacts to essential fish habitat or marine mammals; USACE for projects in navigable waters or that involve dredging or filling in U.S. waters; and SHPO or THPO for effects to historic properties. If the Applicant begins construction work before FEMA completes its EHP review, the Applicant jeopardizes PA funding for that project. FEMA may not be able to conduct consultation with resource agencies after the Applicant initiates work on a project because it forecloses on an agencies' ability to comment on, or consider, alternatives that would avoid, minimize, or mitigate adverse impacts to the environment or effects to historic properties.

Similar to NEPA, Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider actions on historic properties. While some Permanent Work Projects meet allowances within a Statewide Programmatic Agreement or only require a consultation letter to a SHPO/THPO, projects that adversely affect historic properties, including archaeological sites, may require the negotiation of a Memorandum of Agreement (MOA) or a project specific Programmatic Agreement to resolve adverse effects. Depending on the historic property, its level of significance, the level of controversy or if it is a National Historic Landmark (NHL), in addition to SHPO/THPO, FEMA may be required to invite the Advisory Council on Historic Preservation (ACHP) and the National Park Service (NPS) to participate in consultation. These Section 106 agreements to resolve adverse effects may have significant time and cost implications.

Consultations undertaken pursuant to the ESA will typically include required conservation measures for threatened and endangered species and their habitat. Applicants should address environmental planning at the beginning of the project scoping and project development stages

[264] FEMA Instruction 108-1, Section 3.2.
[265] Ibid.
[266] The National Environmental Policy Act of 1969, as amended, Public Law 91-190, 42 U.S.C. §§ 4321–4347.

to help avoid delays and additional costs at the EHP compliance stage. Early environmental planning should include consideration of potential project-related conservation and mitigation measures. When EHP laws, regulations, or EOs require actions to mitigate adverse effects, the Applicant is responsible for all costs associated with performing the required mitigation measures, unless such actions are directly related to the restoration of disaster-related damage.

FEMA is responsible for reviewing connected actions associated with a proposed project, even if FEMA is not funding the connected action. Actions are connected if they: automatically trigger other actions; cannot or will not proceed unless other actions are taken previously or simultaneously; or are interdependent parts of a larger action and depend on the larger action for their justification.

Some projects, such as Improved or Alternate Projects, may involve significant changes to the pre-disaster configuration of a facility (e.g., location, footprint, or size). FEMA conducts EHP compliance reviews on the actual SOW to be performed, prior to approving the project.

To facilitate EHP review, the Applicant should provide:

- ☐ Site map (including geographical coordinates in latitude, longitude) showing the location of all proposed areas where the Applicant will conduct site work or construction and the extent of ground disturbance (including any staging areas, access roads, parking, landscaping, grading, or utilities);
- ☐ Construction dates and photographs of all facilities in the project area;
- ☐ Photographs of all facilities in the project that may be affected by the project;
- ☐ Any known environmental issues or historic preservation concerns, such as, but not limited to, threatened and endangered species including their critical habitat, location in floodplain or wetlands, presence of asbestos within the facility, or facility's location in an archaeologically sensitive area;
- ☐ Environmental assessments;
- ☐ Historic property designations or surveys, including archaeological surveys;
- ☐ Available information about the presence of any resources protected under Federal law (see Appendix A: Environmental and Historic Preservation Compliance for a list of frequently-encountered laws); and
- ☐ Copies of permits and correspondence with regulatory agencies, including but not limited to:
    - SHPO/THPO (historic properties, including archeological sites);
    - USACE (work in navigable waterways, dredging or discharging dredged materials or fill in waterways or wetlands, culvert repair, culvert installation, culvert upsizing, riprap work, bridge work, work involved in a stream, or work in a wetland);
    - USFWS (federally listed threatened and endangered species, migratory birds, bald and golden eagles, work in Coastal Barrier Resource System areas, work in or near waterways or wetlands);
    - National Oceanic and Atmospheric Administration (federally listed threatened and endangered species, essential fish habitat, work in National Marine Sanctuaries);

- EPA (work involving underground injection, work with the potential to increase contamination of sole source aquifers); and
- State, Territorial, or Tribal environmental agencies.

II. Requirement to Obtain and Maintain Insurance

Applicants that receive PA funding for permanent work to replace, repair, reconstruct, or construct a facility must obtain and maintain insurance to protect the facility against future loss.[267] This requirement applies to insurable facilities or property (buildings, contents, equipment, and vehicles), including those funded as an Alternate, Improved, or Alternative Procedures Project. FP 206-086-1 *Public Assistance Policy on Insurance*, describes these requirements in detail.[268]

The Applicant must insure facilities with the types and extent of insurance reasonably available, adequate, and necessary to protect against future loss to the property.[269] The type of insurance refers to the hazard(s) that caused the damage and extent refers to the amount of insurance required, which is calculated based on the eligible costs prior to any reductions (including the non-Federal share reduction).

The Applicant is not required to obtain and maintain insurance on facilities with $5,000 or less in eligible costs (prior to any reductions).[270]

The Applicant may request that FEMA modify the insurance requirement when:

- The required insurance is not reasonably available;
- An alternative to the insurance requirement provides adequate protection against future loss to the property; or
- The required insurance is not necessary to protect against future loss to the property.

Additionally, FEMA does not require greater types and amounts of insurance than are certified as reasonably available, adequate, or necessary by the appropriate State or Territorial Insurance Commissioner.[271] The State or Territorial Insurance Commissioner cannot waive Federal insurance requirements but may certify the types and extent of insurance reasonable to protect against future loss to an insurable facility.[272]

The Applicant may comply with the insurance requirement for both flood and non-flood hazards with coverage available through commercial property insurance, which may include blanket insurance policies, standard flood insurance policies, insurance pools, or a combination of these sources.[273] In some cases, with FEMA approval, the Applicant may comply with the insurance requirement using a self-insurance plan.[274]

If the Applicant does not comply with the requirement to obtain and maintain insurance, FEMA will deny or deobligate PA funds related to the noncompliance from the current disaster.

[267] Stafford Act § 311, 42 U.S.C. § 5154; 44 C.F.R. § 206 Subpart I.
[268] www.fema.gov/media-library/assets/documents/136089.
[269] Stafford Act § 311, 42 U.S.C. § 5154; 44 C.F.R. § 206 Subpart I.
[270] 44 C.F.R. § 206.253(d).
[271] 44 C.F.R. § 206.253(c).
[272] 44 C.F.R. §§ 206.252(d) and 206.253(c).
[273] 44 C.F.R. § 206.253(b)(2).
[274] Stafford Act § 311(c), 42 U.S.C. § 5154(c); 44 C.F.R. Part 75.

Additionally, the facilities for which the Applicant failed to comply are ineligible for future PA funding.

A. Insurance Reductions and Impact on Facility Eligibility in Subsequent Disasters

If the Applicant does not maintain the required insurance from a previous disaster, then the facility is ineligible for PA funding in a subsequent disaster, regardless of the hazard(s) that caused the damage.[275]

When the Applicant receives PA funding for a facility damaged by the same hazard in a subsequent disaster, FEMA reduces funding in this subsequent disaster by the amount of insurance required from the previous disaster. If FEMA or the State or Territorial Insurance Commissioner certification modified the Applicant's insurance requirement, FEMA reduces funding by the modified insurance amount. If the Applicant's anticipated or actual insurance proceeds are higher than the amount of insurance required in the previous disaster, FEMA reduces funding by the anticipated or actual amount of insurance proceeds to avoid a duplication of benefits.

III. Codes and Standards

FEMA provides PA funding to restore facilities based on pre-disaster design and function in conformity with current applicable codes, specifications, and standards.[276] The Applicant needs to provide documentation to support the eligibility of code or standard upgrades, including, but not limited to, the requirement to apply the codes or standards and to support they were formally adopted, implemented, and uniformly applied.

A. Eligibility Criteria

Facility repairs and new construction may "trigger" upgrade requirements established by codes or standards. Upgrades required by Federal or SLTT repair or replacement codes or standards are eligible only if the code or standard:[277]

- Applies to the type of restoration required;
- Is appropriate to the pre-disaster use of the facility;
- Is reasonable, in writing, formally adopted by the SLTT government, and implemented by the Applicant on or before the declaration date, OR is a legal Federal requirement;
- Applies uniformly; and
- Was enforced during the time it was in effect.

1. Applies to the Type of Restoration Required

Codes and standards must apply to the type of restoration required. Codes and standards for new construction are often different than codes and standards for repair work. If FEMA determines a facility is eligible for replacement, compliance with current codes and standards for new construction is eligible. If FEMA determines a facility is ineligible for replacement, only code-required upgrades applicable to repairs are eligible.

[275] Stafford Act § 311(b), 42 U.S.C. § 5154(c); 44 C.F.R. § 206.253(f).
[276] Stafford Act § 406(e), 42 U.S.C. § 5172(e); 44 C.F.R. § 206.226(d).
[277] 44 C.F.R. § 206.226(d).

A code or standard may include a trigger that requires:

- Upgrades to all structural components; or
- In addition to upgrading all structural components, bringing the non-structural components into conformance with current codes or standards for new construction.

If an upgrade to an entire structural or non-structural system within a building is triggered, the upgrade is only eligible if there is a direct relationship between the upgrade work and eligible damage.[278] Only upgrade work within the same system as the damage is eligible.

FEMA evaluates the eligibility of the work to upgrade or change the configuration of damaged systems for reasonableness with respect to the type and extent of damage.

Examples of Codes or Standards that do Not Apply to the Restoration Required

The Applicant requests PA funding for the repair of a damaged building and the construction of a parking garage. The Applicant states that while there was no parking garage prior to the incident, zoning codes and other local ordinances require one. Because parking improvements have no relationship to the disaster-related repairs, they do not apply to the type of restoration required and are ineligible.

Similarly, if a code or standard that applies to new construction or the rehabilitation of an entire road requires the construction of paved shoulders, drainage swales, and berms, the construction of these improvements is ineligible for a project involving repairs to discrete damaged portions of the road shoulders.

2. Appropriate to Pre-disaster Use

Codes and standards must be appropriate to the pre-disaster use of the facility. FEMA determines the eligibility of code-required upgrades based on the facility's pre-disaster design or actual use at the time of the disaster. The least costly of the following is eligible:

- Pre-disaster use of the facility, if serving the same function for which it was originally designed; or
- Alternate use of the facility, if serving an alternate function at the time of the incident.

Example of a Code or Standard that is Not Appropriate to the Pre-disaster Use of the Facility

The original design of a facility was a warehouse; however, the Applicant was using the facility as a classroom before the incident. Restoring the facility as a classroom in conformance with classroom codes or standards would not be eligible if it would cost more than restoring the facility as a warehouse in accordance with code or standards applicable to a warehouse.

3. Reasonable

Codes and standards must be reasonable. When determining reasonableness, FEMA:

- Examines the general reasonableness of the code or standard and the trigger for application of the code or standard;

[278] 44 C.F.R. § 206.223(a)(1).

- Determines whether the upgrade and trigger relate to the type of restoration required by the damage and whether the upgrade and trigger are justified based on the extent of damage;
- Considers whether the upgrade and the trigger are technically defensible from an engineering perspective; and
- Determines whether the cost of the upgrade is reasonable.

FEMA may determine a very large upgrade based on a very low trigger to be unreasonable.

Example of Reasonableness

Installation of a code or standard-required new sprinkler system throughout a building is eligible if that building is replaced. However, installation of that sprinkler system is ineligible if the eligible work only involved repair of the building, even if required by the code or standard, unless it is reasonable based on the eligible repair.

4. Written, Formally Adopted, and Implemented

Codes and standards must be in writing, formally adopted by the SLTT government, and implemented by the Applicant on or before the declaration date, OR be a legal Federal requirement, such as an ADA or seismic safety requirement. An appropriate legislative body or regulatory authority within the jurisdiction must:

- Approve the code or standard;
- Make it a matter of public record; and
- Formally incorporate it into the building code or other applicable ordinance.

The code or standard must apply to the facility in question. For example, if a State has jurisdiction over a particular type of work and formally adopts a code or standard related to that work, a Tribal or local government in that State does not necessarily have had to formally adopt the code or standard for it to apply to its facility. The Tribal or local government meets the above requirement if it shows that it implements the code or standard consistently.

FEMA does not recognize codes or standards adopted by a PNP specifically for its facilities when determining whether compliance with codes or standards is eligible. FEMA also does not accept codes or standards adopted by agencies or divisions of SLTT governments that are not authorized to set codes or standards within the broad governmental jurisdiction of the SLTT government.

Example of a Standard that is Not in Writing, Formally Adopted, and Implemented

FEMA approves funding to replace a culvert that was washed out by a flood. The State natural resources department denies the Applicant's permit application for replacing the culvert, and recommends the Applicant construct a bridge instead. The decision of the permitting officials is discretionary and not based on a written and formally adopted code or standard; therefore, the bridge construction is ineligible.

5. Applies Uniformly

Codes and standards must apply uniformly to all similar types of facilities, whether private or public, eligible or ineligible, in the Applicant's jurisdiction or (if applicable) in a particular hazard zone within its jurisdiction.

For FEMA to find that a code or standard and its triggers are uniformly applied, the code or standard must meet all of the following conditions. The code or standard must:

- Provide for uniform accountability in the event of noncompliance;
- Not be subject to discretionary enforcement by public officials; and
- Not allow for selective application.

A code or standard must meet three tests to demonstrate that it is not selectively applied:

- The upgrade is generally triggered regardless of the cause of damage and is also triggered for renovations or improvements.
- The code or standard is applied regardless of the source of funding for the work.
- The code or standard is not applied selectively based on the availability of funds.

Example of a Standard that Does Not Apply Uniformly

A local jurisdiction has authority over all facilities, both public and private. A statewide code or standard imposes seismic retrofit requirements for all public buildings, but not for privately-owned buildings. The seismic retrofitting is ineligible as it does not apply uniformly to all similar types of facilities within the Applicant's jurisdiction.

6. Enforced

The code or standard must have been enforced during the time it was in effect. FEMA may provide PA funding for costs related to an upgrade based on confirmation of previous enforcement and in reliance on continued enforcement. If the local jurisdiction subsequently violates this criterion, no further work to comply with the code or standard is eligible within the local jurisdiction.

If FEMA determines a jurisdiction has had no reasonable opportunity to enforce the code or standard, the upgrade may be eligible. A reasonable opportunity to enforce may be lacking when a code or standard is new or when a facility affected by the code or standard has not been damaged during the time the code or standard was in effect.

Example of a Code or Standard that Was Not Enforced While in Effect

The City's Building Code requires foundation upgrades when installing new or repairing old trailers. Prior to the incident the City allowed for the installation of several new trailers without the code-required foundation upgrades. After the incident, the Applicant requests funding to upgrade the foundation of several damaged trailers citing the City's Building Code. The upgrades to the foundation of the damaged trailers are ineligible because the Applicant had not been enforcing the standard.

B. FEMA Consensus-Based Codes, Specifications and Standards

For buildings, electric power, roads, bridges, potable water supply, and wastewater, FEMA requires that Applicants incorporate specific codes, specifications, and standards in accordance with FEMA Recovery Interim Policy FP 104-009-11 *Consensus-Based Codes, Specifications and Standards for Public Assistance*.[279]

C. Ineligible Upgrades

Upgrades recommended by design standards, guidelines, policies, industry practices, or other non-mandatory provisions are ineligible if the provisions do not meet all of the criteria noted in Chapter 8:III.A. *Codes and Standards, Eligibility Criteria*. Upgrades that are deemed ineligible but enhance a facility's ability to resist similar damage in a future incident, may be eligible as mitigation (See Chapter 8:IV. *Hazard Mitigation*).

D. Historic Preservation Compliance

1. Federal Requirement

If the facility is listed in, or meets the criteria to be listed in, the National Register of Historic Places, and an applicable code or standard requires repair in a certain manner, costs associated with work to comply with that code or standard are eligible, even if repair costs exceed replacement costs. This is an exception to the regulatory requirement that when a facility is eligible for replacement, FEMA limits eligible costs to the less expensive of repairs or replacement (see Chapter 8:V.C. *Repair vs. Replacement, Eligible Funding*).[280]

2. State, Territorial, or Tribal Government Requirement

If a State, Territorial, or Tribal historic building code or standard requires specific work be performed, FEMA evaluates the code or standard using the eligibility criteria in Chapter 8:III.A. *Codes and Standards, Eligibility Criteria*. Most State historic building codes and standards encourage code officials to allow *less* intrusive alternatives to requirements of the prevailing codes or standards, but do not require any particular work be performed. As a result, the codes and standards usually fail to meet the eligibility criteria.

E. Floodplain Management and Wetland Protection

When providing PA funding for a project in or impacting a floodplain or wetland, the following requirements apply.

For any structure (walled or roofed buildings, including mobile homes and gas or liquid storage tanks)[281] built, replaced, or Substantially Improved in a Special Flood Hazard Area (SFHA), the Applicant must, at a minimum, either elevate or floodproof the lowest floor (including the basement) to or above the 100-year base flood elevation (BFE).[282] The BFE is based on the best

[279] Stafford Act § 406(e)(1)(A)(ii), 42 U.S.C. § 5172 as amended by the Disaster Recovery Reform Act. The interim policy is available at www.fema.gov/media-library/assets/documents/184615.
[280] 44 C.F.R. § 206.226(f)(2) and (3).
[281] 44 C.F.R. § 9.4.
[282] 44 C.F.R. § 9.11(d)(3)(i) and (iii).

available information in accordance with FEMA Policy 104-008-2: *Guidance on the Use of Available Flood Hazard Information*.[283]

If the structure contains a critical action and is in the 100 or 500-year floodplain, the Applicant must, at a minimum, elevate the lowest floor (including the basement) to or above the 500-year flood elevation.[284] If the structure in the 100 or 500-year floodplain is nonresidential, the Applicant may opt to floodproof to the required level instead of elevating.[285]

Critical actions are actions for which even a slight chance of flooding is too great and are further defined in 44 C.F.R. § 9.4, which includes examples of actions that FEMA deems critical. The minimum floodplain of concern for critical actions is the 500-year floodplain (also referred to as the critical action floodplain). If an action is not specified in 44 C.F.R. § 9.4, FEMA utilizes the U.S. Water Resource Council Floodplain Management Guidelines[286] to determine whether a proposed action is deemed a critical action by considering the following:

- The potential for additional impacts if the proposed project is flooded in a future incident (e.g., the facility contains volatile or toxic materials);
- The ability for occupants of buildings such as hospitals, schools, and nursing homes to evacuate in time to avoid loss of life and injury given the flood warning lead-time available in a future incident; and
- The potential for emergency services and utilities to become inoperative, or essential and irreplaceable records to be lost if a facility is flooded in a future incident.

Further, if the structure is substantially improved in a Coastal High Hazard Area, the Applicant must elevate the facility to the BFE (the 500-year

The term **"critical action"** should not be confused with a PNP "critical service."

Terminology

FEMA publishes **Flood Insurance Rate Maps** that identify the following:

- **Special Flood Hazard Area:** The land area subject to inundation during a flood having a 1 percent chance of occurring in a given year (also referred to as the base flood or 100-year flood).
- **Base Flood:** The flood which has a one percent chance of being equaled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.
- **Base Flood Elevation:** The computed elevation to which floodwater is anticipated to rise during the base flood.
- **Coastal High Hazard Area:** The area subject to high velocity waters including, but not limited to, hurricane waves or tsunamis. On a Flood Insurance Rate Map (FIRM), this appears as zone V1-30, VE or V.
- **Floodway:** The portion of the floodplain which is effective in carrying flow, within which this carrying capacity must be preserved and where the flood hazard is usually highest, i.e., where water depths and velocities are the greatest. It is that area which provides for the discharge of the base flood so the cumulative increase in water surface elevation is no more than one foot.

[283] www.fema.gov/media-library/assets/documents/129766.
[284] 44 C.F.R. § 9.11(d)(3)(i) and (ii).
[285] 44 C.F.R. § 9.11(d)(3)(iii).
[286] www.energy.gov/nepa/downloads/floodplain-management-guidelines-implementing-eo-11988-water-resources-council-1978.

flood elevation for critical actions) (including wave height) on open works (walls columns, piers, piles, etc.) and anchor it properly.[287] New construction is prohibited in a Coastal High Hazard Area and within regulatory floodways unless the structure has a functionally dependent use; or facilitates open space use.[288]

F. Requirement for Communities Participating in the National Flood Insurance Program

A community that participates in the National Flood Insurance Program (NFIP) must adopt and enforce a floodplain management ordinance that meets or exceeds the minimum NFIP requirements.[289] Such an ordinance must contain construction requirements for new construction or Substantial Improvement of buildings located in a SFHA. In addition to other requirements, the ordinance must require that new or Substantially Improved buildings be elevated so that the lowest floor is at or above the BFE or floodproofed to a level equal to or above the BFE (some communities have more restrictive ordinances that require elevation or floodproofing to greater levels.)

Work required for compliance with the floodplain ordinance is eligible provided the ordinance meets the eligibility criteria for codes and standards and the Substantial Improvements are disaster-related repairs. If the cost to repair a facility in accordance with the floodplain ordinance is greater than the cost to replace the facility in accordance with the ordinance, the eligible cost is capped at the replacement cost.

G. Accessibility for Individuals with Disabilities

The ADA and other disability rights laws such as the Architectural Barriers Act (ABA) require that all newly constructed facilities be accessible to and usable by individuals with disabilities[290] and that repairs that might affect the ability of individuals with disabilities to use the facility comply with accessibility standards.[291] In some circumstances, FEMA provides PA funding for accessibility compliance requirements.

FEMA provides PA funding regardless of whether the facility was in compliance prior to the incident, provided the Applicant was not cited for a violation. If the Applicant was notified of being in violation of a requirement prior to the incident and did not bring the facility into compliance, then accessibility requirements related to the violation are ineligible.

[287] 44 C.F.R. § 9.11(d)(2) and (7).
[288] 44 C.F.R. § 9.11(d)(1)
[289] 44 C.F.R. § 60.3.
[290] 42 U.S.C. § 12101 et seq.; 28 C.F.R. § 35.151(a)
[291] 42 U.S.C. § 12147(a); 28 C.F.R. § 35.151(b).

Some special provisions apply when ADA requirements "threaten or destroy the historic significance of qualified historic buildings and facilities."[292] FEMA addresses these provisions during its consultation with the SHPO or THPO and incorporates them into the agreement regarding the repairs to the building.

FEMA may also provide PA funding for additional SLTT government ADA requirements that meet the eligibility criteria for codes or standards, as described in Chapter 8:III.A. *Codes and Standards, Eligibility Criteria*.

Terminology

A **primary function area** is the area where a major activity occurs for which the facility is intended. Examples include the dining area of a cafeteria, meeting rooms of a conference center, and public offices providing governmental services to the public.

Path of travel includes a continuous, unobstructed way of pedestrian passage to the primary function area. This includes interior and exterior approaches such as hallways, doorways, sidewalks, streets, parking areas, and public transit drop points. See Figure 14. *Path of Travel*.

Service facilities to the primary function area include restrooms, telephones, and drinking fountains.

See www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards.

Facilities Eligible for Repair

If the primary function area sustained eligible disaster damage, FEMA may provide PA funding for reasonable changes required by an eligible code or standard to increase accessibility to undamaged elements that serve the primary function area and the path of travel to the primary function area such as an accessible entrance, accessible routes to the primary function area, restroom access, accessible drinking fountains, and other elements.

To be eligible for PA funding, the required alterations must have a reasonable and technically supportable relationship to the damaged elements of the facility. As a result, there may be alterations required that are ineligible for PA funding.

PA funding for alterations to the path of travel requirements cannot exceed the ADA requirement of 20 percent of the total cost to repair the primary

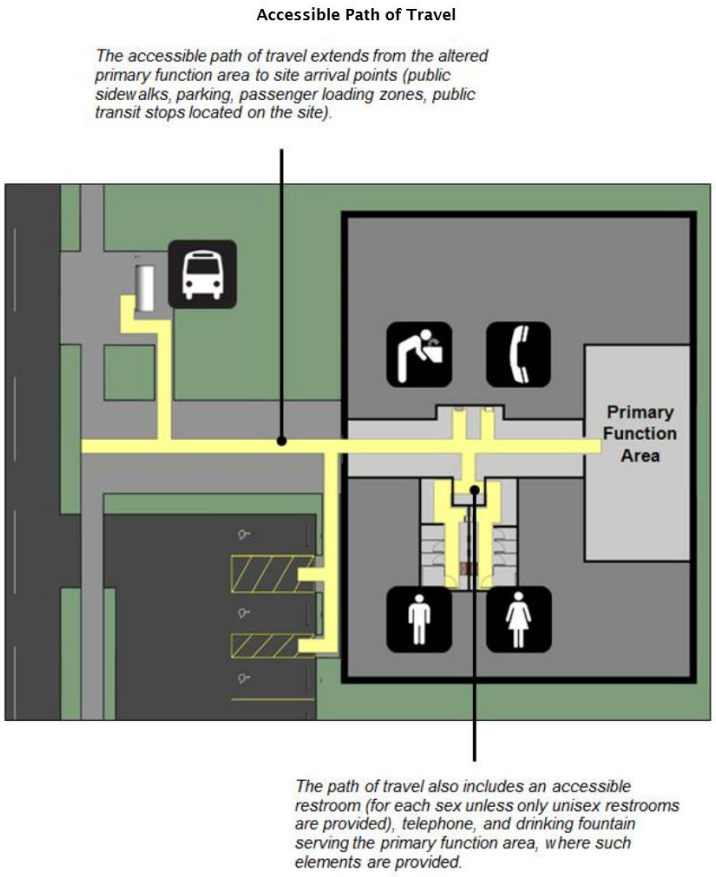


Figure 14. Path of Travel

[292] 28 C.F.R. § 36.405.

function area.[293] The 20 percent calculation is defined at 28 C.F.R. § 35.151(b)(4)(iii). If the costs for ADA upgrades exceed the 20 percent, the Applicant must prioritize the accessible elements as described in 28 C.F.R. § 35.151 (b)(4)(iv).

If the Applicant engages in repairs that are ineligible for PA funding, the cost of requirements triggered by those repairs are ineligible.

H. Permit Requirements

If a Federal or SLTT government permitting agency requires additional work based on a code or standard that does not meet the eligibility criteria in Chapter 8:III.A. *Codes and Standards, Eligibility Criteria*, the cost of the additional work is only eligible if the work:

- Does not change the pre-disaster size, capacity, or function of the facility;
- Applies to the type of repair or restoration required;
- Is reasonable based on the type and extent of damage; and
- Is an established, enforced, uniform practice that applies to all similar types of facilities within the Applicant's jurisdiction, regardless of the circumstance.

IV. Hazard Mitigation

Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. FEMA has authority to provide PA funding for cost-effective hazard mitigation measures for facilities damaged by the incident.[294]

In addition to providing funding for hazard mitigation under the PA Program, FEMA also provides hazard mitigation funding under its Hazard Mitigation Assistance (HMA) programs. FEMA's Federal Insurance and Mitigation Administration administers the HMA programs, which are briefly described in Figure 15. *FEMA Hazard Mitigation Programs*. The eligibility criteria, procedures, and timelines for implementation of the hazard mitigation measures funded under the HMA programs differ from the hazard mitigation measures funded under the PA Program.

[293] For calculation purposes, the total costs of the primary function area repair include the repair costs of the roof, HVAC system, mechanical rooms, janitorial closets, locker rooms, and private offices directly associated with the repair of the primary function area.
[294] Stafford Act § 406(e), 42 U.S.C. § 5172; 44 C.F.R. § 206.226(e).

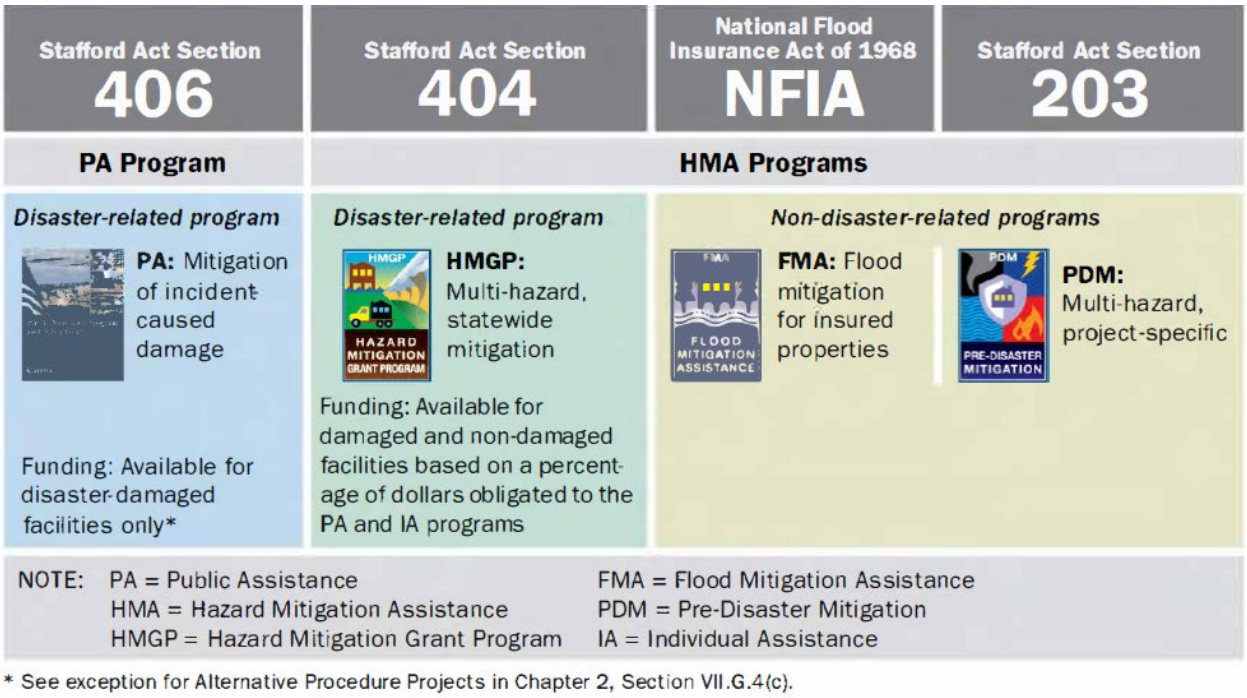


Figure 15. FEMA Hazard Mitigation Programs

FEMA refers to PA-funded hazard mitigation as PA mitigation and mitigation funded under HMGP as HMGP mitigation.

The Applicant may use both PA mitigation and HMGP mitigation funds to implement mitigation measures on the same facility, but not for the same work. The Applicant cannot use funds from one of these mitigation programs to meet the non-Federal cost share of work funded under the other mitigation program.

This document provides details regarding PA mitigation funding. FEMA's *Hazard Mitigation Assistance Guidance* provides further details on HMGP mitigation funding and the HMA programs.[295]

Hazard Mitigation Grant Program

The Recipient manages HMGP and is responsible for soliciting applications from STTL government agencies. Projects submitted to the Recipient must be in accordance with the Recipient's Hazard Mitigation Plan, address severe detrimental impacts, and have the greatest potential to reduce future losses. Eligible projects include acquisition of hazard-prone property, retrofitting existing buildings and facilities, elevation of flood-prone structures, infrastructure protection measures, and hazard mitigation planning. SLTT government agencies should direct questions regarding HMGP to the State, Territorial, or Tribal Hazard Mitigation Officer: www.fema.gov/state-hazard-mitigation-officers.

A. Public Assistance Hazard Mitigation

FEMA evaluates proposed PA mitigation measures for eligibility, cost-effectiveness, technical feasibility and effectiveness, and compliance with EHP laws, regulations, and EOs. In addition, FEMA ensures that the mitigation does not negatively impact the facility's operation or surrounding areas or create susceptibility to damage from another hazard.

[295] www.fema.gov/media-library/assets/documents/103279.

To be eligible for PA funding, the mitigation measures must directly reduce the potential of future damage to the damaged portion(s) of the facility. Generally, eligible PA mitigation measures are those the Applicant performs on the damaged portion(s) of the facility. If the Applicant proposes mitigation measures that are distinct and separate from the damaged portion(s) of the facility, FEMA evaluates the proposal and determines eligibility on a case-by-case basis considering how the mitigation measure protects the damaged portion(s) of the facility and whether the mitigation measure is reasonable based on the extent of damage. Some examples of such measures include:

- Constructing floodwalls around damaged facilities;
- Installing new drainage facilities (including culverts) along a damaged road;
- Adding fire suppression systems at facilities damaged by wildfire; and
- Dry floodproofing both damaged and undamaged buildings that contain components of a system that are functionally interdependent (i.e., when the entire system is jeopardized if any one component of the system fails).

If FEMA determines mitigation measures to undamaged portions ineligible as PA mitigation the Applicant may request HMGP funding from the State, Territorial, or Tribal government to provide protection to undamaged portions, while utilizing PA mitigation funds to provide protection to damaged portions.

PA mitigation opportunities usually present themselves during facility repair. However, in cases where the Applicant needs to repair a facility in an expedited manner, it may miss an opportunity to implement mitigation measures during repair. If the Applicant implements mitigation measures after the PA-funded repair is complete, the mitigation work may still be eligible for PA funding; however, FEMA will not provide PA funding for any duplicative work triggered by the subsequent mitigation.

Hazard Mitigation Best Practices

FEMA publishes documents describing best practices to reduce loss of life and property when repairing damaged facilities. These publications are listed in FEMA P-787, Catalog of FEMA Building Science Branch Publications and Training Courses at www.fema.gov/media-library/assets/documents/12909.

In some instances, the Applicant may implement mitigation measures after the incident occurs but before the incident is declared or before FEMA has the opportunity to evaluate the measure for eligibility. In these cases, the mitigation work may still be eligible for PA funding if it is cost-effective and FEMA confirms compliance with applicable EHP laws, regulations, and EOs.

If FEMA approves PA funding for mitigation and the Applicant does not complete the PA mitigation work, FEMA will deobligate the PA mitigation funds.

Cost-effective Evaluation

PA mitigation measures must be cost-effective.[296] FEMA considers PA mitigation measures to be cost-effective if any of the following criteria are met:

[296] 44 C.F.R. § 206.226(e).

- The cost for the mitigation measure does not exceed 15 percent of the total eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies;
- The mitigation measure is specifically listed in Appendix J: *Cost-Effective Public Assistance Hazard Mitigation Measures*, AND the cost of the mitigation measure does not exceed 100 percent of the eligible repair cost (prior to any insurance reductions) of the facility or facilities for which the mitigation measure applies; and
- The Recipient or Applicant demonstrates through an acceptable benefit-cost analysis (BCA) methodology that the measure is cost-effective. FEMA's BCA software[297] provides appropriate BCA methodologies.

Many mitigation measures that do not meet the first two requirements above prove to be cost-effective based on a BCA. If the mitigation measure is not cost-effective based on the first two criteria, FEMA, the Recipient, and the Applicant work together to develop a BCA to determine whether it is cost-effective.

A BCA is based on a comparison of the total estimated cost for the PA mitigation measure to the total value of expected benefits to society. FEMA's BCA methodology considers common project benefits, which include reductions in the magnitude or frequency of:

- Damage to the facility and its contents;
- The need for emergency protective measures;
- The need for temporary facilities;
- Loss of function;
- Casualties (typically included only for earthquake, tornado, and wildfire mitigation); and
- Previous impacts regardless of whether the impacts occurred in Federal declarations (only if documented).

B. Public Assistance Mitigation Funds for Capped Projects

1. Improved Project

If the capped amount for an Improved Project includes PA mitigation funds and the Applicant either does not complete the PA mitigation work, or replaces or relocates the original facility, FEMA deobligates the PA mitigation funds.

2. Alternate Project

If the SOW to restore a facility includes PA mitigation, and the Applicant elects to proceed with an Alternate Project, FEMA does not include costs related to the PA mitigation in the capped amount for the Alternate Project.

3. Alternative Procedures Project

When the Applicant is restoring the function, but changing the pre-disaster capacity of a facility, the proposed PA mitigation SOW is developed based on the actual SOW to be performed; however, the cost-effectiveness is evaluated based on the fixed-cost amount accepted for the pre-disaster restoration SOW. If the capacity is increased, the proposed hazard mitigation SOW and cost is limited to the SOW and cost necessary to mitigate to the pre-disaster capacity of the

[297] www.fema.gov/benefit-cost-analysis.

damaged facility. If the Applicant does not complete the approved PA mitigation, FEMA deobligates the portion of the fixed-cost amount related to hazard mitigation.

V. Repair vs. Replacement

When evaluating whether a damaged facility is eligible for replacement, FEMA compares the repair cost with the replacement cost and evaluates the feasibility of repairing the facility.[298]

A facility is considered repairable when:

- The cost to repair the disaster-related damage does not exceed 50 percent of the cost to replace the facility based on its pre-disaster size, capacity, and function; and
- It is feasible to repair the facility so that it can perform the pre-disaster function as well as it did prior to the incident.[299]

The comparison of the repair cost to the replacement cost results in a fraction that expresses repair as a percentage of replacement. The percentage is calculated with the repair cost as the numerator and the replacement costs as the denominator. FEMA refers to this as the "50% Rule."

The purpose of the 50% Rule is to make an early determination on whether it is more prudent to repair or replace a facility. It is not intended to be a full calculation of all eligible project costs.

A. Calculation

The repair cost (numerator) is the cost of repairing disaster-related damage only and includes costs related to compliance with codes and standards that apply to the repair of the damaged elements only.[300] The numerator does not include costs associated with:

- Upgrades of non-damaged elements even if required by codes or standards (e.g., elevation of an entire facility triggered by repair);
- Demolition beyond that which is essential to repair the damaged elements;
- Site work;
- Soft costs;
- Contents;
- Hazard mitigation measures; or
- Emergency Work.

The replacement cost (denominator) is the cost of replacing the facility based on its pre-disaster design (size and capacity) and function in accordance with applicable codes or standards. The denominator does not include costs associated with:

- Demolition;
- Site work;

Terminology

Soft costs are those not considered as direct construction costs, including:

- Architectural costs
- Engineering costs
- Project management costs
- Financing
- Legal fees
- Other pre-/post-construction expenses

Site Work is any exterior work at the site. Examples include:

- Excavation
- Backfill
- Erosion control
- Utility installation
- Paving

[298] 44 C.F.R. § 206.226(f).
[299] 44 C.F.R. § 206.226(f)(1).
[300] This includes consensus-based codes, specifications, and standards.

- Soft costs;
- Contents;
- Hazard mitigation measures; or
- Emergency Work.

Although certain costs are not included in the 50% Rule calculation to determine whether the facility is eligible for replacement, the costs may be eligible for PA funding subject to all other eligibility requirements.

B. Written Request

The Applicant should submit its request for replacement within one year of the Declaration. The request should include both repair and replacement cost estimates with supporting documentation, prepared in accordance with the requirements described in Chapter 9:II.E.2. *Applicant Estimates*.

FEMA professionally licensed engineers and architects, qualified cost estimators, construction managers, and staff with other technical expertise, as necessary, develop or review and validate the estimates used in the 50% Rule calculations. For any replacement requests over $5 million, FEMA submits the estimates to an independent third-party for an additional review of the estimates. FEMA considers the results of the third-party review prior to approving replacement.

C. Eligible Funding

If the estimated repair cost exceeds 50 percent of the estimated replacement cost,[301] the actual replacement cost is eligible. The Applicant may elect to repair the facility in conformance with applicable codes and standards. In this case, FEMA limits the eligible cost to the estimated cost of repair or replacement, whichever is less.[302]

If the facility is not eligible for replacement based on the 50% Rule but the **total** estimated repair cost exceeds the **total** estimated replacement cost (not the estimated costs used for the 50 percent calculation), FEMA caps the total eligible cost at the **total** estimated replacement cost.

Relocation is only eligible for PA funding if it meets the requirements of Chapter 8:VI. *Relocations*. If compliance with a code or standard is not feasible without relocating a facility and

Floodplain Management Ordinance Compliance

The costs to comply with a local floodplain management ordinance that requires elevation or floodproofing of a Substantially Damaged facility in an SFHA are eligible for PA funding. These costs are not included in the repair cost of the 50% Rule calculation but are included in the replacement cost of the calculation. Therefore, the repair cost for the 50% Rule calculation is estimated without regard to whether the facility receives a substantial damage determination or whether the facility contains a critical action.

[301] For repair versus replacement, the term "replacement cost" means the cost of replacement in accordance with applicable codes and standards.
[302] 44 C.F.R. § 206.226(f)(2).

relocation is not eligible for PA funding based on Chapter 8:VI. *Relocations*, then FEMA caps the funding without including the costs related to relocation and considers it an Improved Project.

Demolition of a facility that is eligible for replacement is eligible as part of the work to replace the facility. Eligible costs include removal of the associated demolition debris.

PA mitigation funding cannot be applied to replacement facilities, unless the facility is part of an Alternative Procedures Project (described in Chapter 8:VIII. *Capped Projects*) or the mitigation measure is listed in Appendix J: *Cost Effective Public Assistance Hazard Mitigation Measures*.

As discussed in Chapter 8:III.D.1. *Historic Preservation Compliance, Federal Requirement*, if an applicable code or standard requires that a historic facility be restored in a certain manner and does not allow other options, the cost to restore the facility in accordance with the code or standard is eligible and may exceed the estimated replacement cost.[303] A historic facility is defined as one listed in, or eligible for listing in, the National Register of Historic Places.

Substantial Damage Determination

A floodplain manager's Substantial Damage determination is part of the NFIP eligibility process and is separate and distinct from the PA eligibility process for determining whether a facility is eligible for replacement or relocation.

FEMA determines whether replacement costs are eligible for PA Program based on the criteria in Chapter 8:V. *Repair vs. Replacement*. FEMA determines whether relocation costs are eligible for PA funding based on the criteria in Chapter 8:VI. *Relocation* and 8:IV. *Hazard Mitigation*.

D. Replacement of Components of a Facility or System

FEMA does not apply the 50% Rule to a facility's structural or mechanical components (e.g., windows, roofs, HVAC; electrical, plumbing). For example, FEMA does not apply the 50% Rule to a damaged HVAC system to determine whether the system should be repaired or replaced because it is a component of a building. If the HVAC system is repairable, as determined by an inspector or engineer with appropriate technical expertise, FEMA limits its funding to the repair of the system.

For facilities that are systems composed of multiple components that are easily segregated, FEMA applies the 50% Rule to individual components of the system, rather than the entire system. The following are examples of facilities that are systems to which FEMA applies the 50% Rule calculation to individual components:

- Drainage channel or irrigation system: a section from damaged node to damaged node, which is where there are intersections or connecting points.
- Water or sewer line system: a section of piping from damaged manhole to damaged manhole, a lift station, or a manhole structure.
- Water or wastewater treatment plant: a control building, clarifier, or sedimentation pond.
- Roadway: each damaged roadway section.

Electrical distribution systems are evaluated for replacement based on the criteria in Chapter 8:IX.D.2. *Power: Transmission and Distribution System Conductor Replacement*.

[303] 44 C.F.R. § 206.226(f)(3).

The following are examples of facilities to which FEMA applies the 50% Rule to the entire facility:

- Bridges;
- Culverts;
- Buildings;
- Pumping stations;
- Piers;
- Pools, including integral pumping;
- Bath houses or rest rooms;
- Equipment;
- Lighting structures; and
- Signs.

VI. Relocation

FEMA may approve funding for and require restoration of an Applicant's destroyed (i.e., eligible for replacement) facility at a new location. FEMA only provides PA funding when all of the following conditions apply:

- The facility is subject to repetitive heavy damage because of its location. For example, facilities located in a SFHA or wildland-urban interface[304] and subject to repetitive heavy flood or fire damage;
- Project approval is not barred by other regulations;[305] and
- The overall project, including all costs, is cost-effective. If the cost to relocate the facility is less than the eligible cost to replace the facility at its original location (the value of the land at the original site is not included as part of this evaluation) then the project is cost effective. In instances where the cost of relocation exceeds the cost to replace the facility at its original location FEMA may use its BCA process and software to determine cost effectiveness.

An applicable Federal or SLTT code or standard, such as a floodplain management regulation, may also require that a damaged facility be relocated away from a hazardous area (e.g. floodway). If the facility is destroyed (i.e. eligible for replacement), FEMA determines whether relocation is cost-effective in the same manner as described above.

If the Applicant requests relocation of a facility that FEMA is not requiring to be relocated, FEMA may provide funding for the relocation if it is more cost-effective than replacing it at the current location. In the case of a request for relocation, FEMA evaluates the cost effectiveness as a PA mitigation measure using its BCA process and software[306] to compare the benefits of the damage prevented to the facility at its original location against the cost of replacement and relocation at the new location.

[304] The wildland-urban interface (WUI) is the area between wildland and urban land.
[305] 44 C.F.R. § 206.226(g)(1).
[306] www.fema.gov/benefit-cost-analysis.

If relocation is not feasible, cost effective, or eligible for PA funding the Applicant may request an Improved, Alternate, or Alternative Procedures Project as detailed in Chapter 8:VIII. *Capped Projects*.

A. Eligible Work and Funding

Eligible work associated with relocation includes land acquisition and construction of necessary support facilities, such as roads, parking lots, and utilities. Demolition and removal of the original facility are also eligible if deemed necessary.[307] FEMA limits PA funding to the amount necessary to make the relocated facility and its associated components operational.

FEMA considers the proximity of the new site to utilities (water, sewer, and electric) and approves the least costly solution. Construction of an off-site support facility is only eligible if it is a utility that would serve the relocated facility exclusively.

For land acquisition, if the facility was located on 10 acres of land at the time of the incident, and FEMA determines that 10 acres is not necessary for the operation of the facility, FEMA limits PA funding to the necessary amount of land.

In situations where the Applicant owns the facility, but not the land or the support facilities at the original location, the cost to purchase the land or build support facilities is ineligible.

When FEMA requires relocation, FEMA does not provide future PA funding for repair or replacement of the original facility or for other facilities at the original site unless the facility facilitates an open space use.[308] For example, if the Applicant converts the original site to a park, FEMA may provide PA funding in the future for park components, such as benches, tables, restrooms, or gravel roads.

B. Sale or Lease of Property at Original Site

The Applicant may sell or lease the original facility or the land on which a relocated facility was originally located. The Applicant must inform the purchaser of the property that FEMA will not provide future PA funding for repair or replacement of the original facility or for other facilities at the original site unless the facility facilitates an open space use.

The property which the facility is relocated to, and the relocated facility itself, are subject to the real property provisions of 2 C.F.R. part 200 including disposition and reporting requirements under 2 C.F.R. §§ 200.311 and 329, respectively.

If the Applicant takes an action, such as demolition, using PA funds at the original site, FEMA must complete an EHP review before the action occurs.

VII. Facility Located in or Impacting a Floodplain

When FEMA provides PA funding for restoration of a facility located in or impacting a floodplain, FEMA is required to ensure minimization of harm to or within the floodplain.

[307] 44 C.F.R. § 206.226(g)(2).
[308] 44 C.F.R. § 206.226(g)(3).

A. 8-Step Decision-making Process

FEMA is responsible for determining whether a PA project will have an adverse impact on the 100-year floodplain (500-year floodplain for critical actions). To make this determination, FEMA initiates the 8-step decision-making process defined in 44 C.F.R. § 9.6. As part of this process FEMA evaluates the impacts the project may have on the floodplain and practicable alternatives for environmental, social, economic, technical, and legal factors, as defined in 44 C.F.R. § 9.9. Some alternatives may not be eligible for PA funding. For example, if the 8-step review process identifies relocation of a facility as a practicable alternative to repairing it in the SFHA, but the facility is ineligible for relocation as described in Chapter 8:VI. *Relocations*, then costs associated with relocating the facility are ineligible for PA funding. FEMA considers whether each alternative identified is eligible for PA funding and, if not, whether the Applicant has funding available to proceed with the alternative without PA funding.

Projects in the 100-year floodplain (500-year floodplain for critical actions) are only eligible if, as a result of completing the 8-step process, FEMA is unable to identify a practicable alternative to restoring the facility within the floodplain. The 8-step process is not required for projects where the repair cost is less than $5,000.[309]

B. Facility Located in a Special Flood Hazard Area

SFHAs[310] are areas that are subject to inundation during a 100-year flood (a flood having a 1 percent chance of occurrence in a given year).

1. National Flood Insurance Program

For an NFIP-insurable facility located in an SFHA, FEMA must reduce PA funding when the facility is:

- Located in an area that FEMA has identified as an SFHA for more than 1 year;
- Damaged by flooding; and
- Uninsured for flood loss.

If the Applicant believes that its property is incorrectly identified on a Flood Insurance Rate Map (FIRM) as being located within the SFHA, it may request a Letter of Map Amendment or Letter of Map Revision from FEMA within 6 months of the declaration. If the Applicant's request is approved and FEMA determines that the property is not located in an SFHA, FEMA may reinstate PA funding. Costs incurred in pursuit of a Letter of Map Amendment or Letter of Map Revision are ineligible for PA funding.

If the Applicant does not have flood insurance for the facility or carries inadequate flood insurance for the insurable facility, FEMA reduces eligible project costs by the lesser of:

- The maximum amount of insurance proceeds that could have been obtained from an NFIP standard flood insurance policy for the building and its contents;[311] or
- The value of the building and its contents at the time of the incident.

[309] 44 C.F.R. § 9.5(c)(13).
[310] 44 C.F.R. § 206.251.
[311] 44 C.F.R. § 206.252(a).

FEMA does not apply this reduction to PNP facilities in communities that do not participate in the NFIP.[312] However, for FEMA to provide PA funding for the PNP facility, the community must agree to participate in the NFIP within 6 months of the declaration and the PNP must purchase the required flood insurance; or the PNP must obtain and maintain flood insurance from another source.[313]

Intent of Permanent Work Alternative Procedures

The intent of the PA Alternative Procedures for Permanent Work is to provide the Applicant with a flexible avenue to drive its own recovery outcomes. Instead of driving the Applicant's recovery within the confines of what the PA Program can fund, PA staff develop projects and identify the amount of PA funds that are available for Applicants to use toward a strategic recovery outcome. The Recipient and Applicant may also work together with various Federal agencies and other stakeholders to identify other available sources of funding that may also be applied to achieve the desired outcome.

VIII. Capped Projects

FEMA provides three options that provide flexibility for the Applicant to use PA funding differently than restoring the pre-disaster design and function of the facility. For these options, FEMA caps the amount of PA funding based on the estimated amount to restore the damaged facility to its pre-disaster design and function, including current eligible codes and standards as defined in Chapter 8:III. *Codes and Standards*.[314]

The three capped project options are:

- Alternative Procedures Project under Section 428 (Large Projects only):[315] This type of project offers the maximum amount of flexibility with how the Applicant may use PA funding, including use of excess funds which are not eligible under the Improved or Alternate Project options. The Applicant may use funds across all Permanent Work Alternative Procedures Projects with no requirement to rebuild communities back to what existed prior to the disaster. Alternative Procedures Projects are subject to acceptance of a fixed-cost offer within the deadlines described in Chapter 9:II.E.6(a). *Fixed Cost Offer Deadlines*.
- Improved Project: The Applicant may wish to make improvements to a damaged facility that are not required by eligible codes or standards. A project that restores the pre-disaster function of a facility and incorporates improvements or changes to the pre-disaster design is an Improved Project.
- Alternate Project: The Applicant may determine that the public welfare is not best served by restoring the function of the damaged facility. When this occurs, the Applicant must obtain FEMA's approval to apply PA funding toward a different facility (or facilities). FEMA refers to this as an Alternate Project.[316] The Alternate Project must be a

[312] 44 C.F.R. § 206.252(b).
[313] Ibid.
[314] This includes consensus-based codes, specifications, and standards.
[315] Stafford Act § 428, 42 U.S.C. § 5189f.
[316] 44 C.F.R. § 206.203(d)(2).

permanent project that benefits the general public, serving the same general area that was being served by the original facility.

Capped projects may involve significant changes to the pre-disaster configuration of a facility (e.g., location, footprint, or size). FEMA conducts EHP compliance reviews on the actual proposed SOW to be performed, prior to approving the project.

A. Capped Project Funding

Alternative Procedures Project Funding Under Section 428

FEMA caps Federal funding for an Alternative Procedures Project based on the aggregate Federal share of the approved estimated cost:

- To restore the damaged facilities to pre-disaster design and function in accordance with eligible codes and standards; and
- For cost-effective PA mitigation measures associated with the actual restoration SOW that the Applicant will perform.

Improved Project Funding

FEMA limits Federal funding for an Improved Project to the lesser of the following:

- The Federal share of the approved estimate to restore the damaged facility to its pre-disaster design and function; or
- The Federal share of the actual costs of completing the Improved Project.[317]

FEMA only increases eligible funding for an Improved Project if the Applicant identifies an error or omission in the original SOW or cost estimate related to restoring the facility to its pre-disaster design and function.

Alternate Project Funding

FEMA limits Federal funding for an Alternate Project to the lesser of:

- The Federal share of the approved estimate to restore the damaged facility to its pre-disaster design and function; or
- The Federal share of the actual cost of completing the Alternate Project.[318]

B. Use of Capped Project Funds

FEMA has different requirements for how the Applicant can use the funds related to each type of capped project.

[317] 44 C.F.R. § 206.203(d)(1).
[318] 44 C.F.R. § 206.203(d)(2)(ii) and (iii).

1. Use of Alternative Procedures Project Funds

FEMA will complete a fixed-cost estimate for all large Permanent Work Projects. FEMA will transmit this estimate as a fixed-cost offer to the Applicant for consideration. When the Applicant accepts a fixed cost offer for a Large Project in accordance with Chapter 9:II.E.6(a). *Fixed Cost Offer Deadlines*, FEMA considers it an Alternative Procedures Project and the Applicant is:

Example of an Alternative Procedures Project

A county road crosses a watercourse and its adjacent floodplain using five culverts. During the incident, floodwaters overtop the road and damage the crossings, either by washing out the culverts or by damaging the roadway and headwalls. FEMA approves a Project to repair or replace each culvert crossing, including hazard mitigation measures to increase the size of the culverts. The Applicant requests that the aggregate funding for the five crossings be used to replace the current configuration with one bridge.

- Not required to rebuild back to what existed prior to the disaster;
- Allowed to share funds across all Alternative Procedures Permanent Work Projects;
- Not required to track costs to specific work items or facilities as funds can be shared across all Alternative Procedures Permanent Work Projects;
- Allowed to retain and use excess funds to reduce risk and improve future disaster operations (subject to timely closeout); and
- Eligible for cost-effective hazard mitigation on Replacement Projects.

The Applicant may use Alternative Procedures Permanent Work Project funds, including any excess funds across all of its Alternative Procedures Permanent Work Projects.

The Applicant may request to use the funds for any of the activities defined as eligible under the *Use of Fixed-Cost Funds* column in the table below. Once FEMA approves, and the Applicant completes, the SOW associated with these activities, the Applicant may use any excess funds for the expanded list of eligible activities listed under the *Use of Excess Funds* column.

Any excess funds remaining after the approved SOW is complete may be used for cost- effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster, and activities that improve future PA operations or planning. The Applicant must submit a proposed SOW for use of any excess funds, along with a project timeline to the Recipient within 90 days of completing its last Alternative Procedures Project. The Recipient must forward the request to FEMA within 180 days of date the last Alternative Procedures Project was completed. FEMA evaluates the proposed use of excess funds for reasonableness to ensure prudent use of funds. FEMA also evaluates the submitted project timeline and approves an appropriate deadline for work completion, not to exceed the overall disaster period of performance.

The following table lists examples of eligible and ineligible types of work and costs when using fixed-cost funds and excess funds.

Type of Work or Cost (all work or costs listed must otherwise be eligible for PA)	**Use of Fixed-Cost Funds**	**Use of Excess Funds**
Restoration of disaster-damaged facilities and equipment	Eligible	Eligible

Alternate Projects (e.g., purchasing equipment, constructing new facilities, improvements to undamaged facilities such as shelters and emergency operation centers) in declared areas	Eligible	Eligible
Cost-effective hazard mitigation measures for undamaged facilities	Ineligible	Eligible
Covering future insurance premiums, including meeting obtain and maintain (O&M) insurance requirements, on damaged or undamaged facilities	Ineligible	Eligible
Work on facilities that are ineligible due to a failure to meet previous O&M requirements	Ineligible	Ineligible
Conducting or participating in training for response or recovery activities, including Federal grants management or procurement courses	Ineligible	Eligible
Planning for future disaster response and recovery operations, such as developing or updating plans (e.g., Debris Management Plans, Hazard Mitigation Plans, Pre- disaster Recovery Plans, Emergency Management Plans), integrating these plans into other plans, preparedness activities, exercises, and outreach	Ineligible	Eligible
Salaries for PA or emergency management staff. This may include but is not limited to, staff performing PA award or subaward administration, monitoring, and closeout activities for other PA disaster awards, and staff developing or updating disaster plans	Ineligible	Eligible
Paying down debts	Ineligible	Ineligible
Covering operating expenses	Ineligible	Ineligible
Covering budget shortfalls	Ineligible	Ineligible
Covering the non-Federal cost share of FEMA projects or other Federal awards	Ineligible	Ineligible

Obtain-and-maintain requirements for insurance apply to work funded with excess funds, as appropriate.

If the Applicant does not accept the fixed-cost offer, the project will be processed utilizing standard procedures and final funding will be based on actual costs. The flexible use of funds and the use of excess funds are not available under standard procedures.

2. Use of Improved Project Funds

The Applicant may use Improved Project funds to improve the damaged facility. The facility must have the same function and at least the same capacity that existed immediately prior to the disaster. The following are examples of Improved Projects:

- Laying asphalt on a gravel road;
- Replacing a firehouse that originally had two bays with a firehouse that has three bays;
- Incorporating requirements dictated by a code or standard that does not meet PA eligibility criteria; and

- Relocating a facility when FEMA is not requiring the relocation.

The Applicant must obtain approval from the Recipient.[319] If the Improved Project significantly changes the pre-disaster configuration of the facility, the Recipient must forward the request to FEMA to ensure that the Improved Project complies with appropriate EHP laws, regulations, and EOs.

The Applicant can combine PA funds with funding from another Federal agency to construct the Improved Project. However, the Applicant cannot use funding from another Federal agency toward the non-Federal cost share of the PA-funded project, unless the legislation for the other grant allows such use. CDBG[320] is an example of a Federal program that, in certain circumstances, allows use of its funding to meet the non-Federal share of another Federal grant program.

3. Use of Alternate Project Funds

The Applicant may use Alternate Project funds toward a project that does not restore the pre-disaster function of the damaged facility. This includes:

- Repair, expand, mitigate, or construct a facility that would otherwise be an eligible facility under the PA Program;[321]
- Demolish facilities;
- Purchase capital equipment that has a useful life of at least 1 year and is equal to, or greater than, $5,000 per unit;
- Fund project shortfalls due to mandatory flood insurance reductions taken from PA Program funding for repairs to buildings in SFHAs (see Chapter 8:VII.B.1. *National Flood Insurance Program*);
- Supplement funds for an Improved Project; and
- Conduct cost-effective hazard mitigation measures, regardless of whether the facility was damaged by the incident and whether the measures reduce the risk of future damage from the same type of incident or of the same type of damage caused by the incident. Alternate Project funds may be use used for hazard mitigation provided that:
    - Funding does not duplicate other FEMA mitigation funding; and
    - Measures reduce the risk of future damage to a facility that is otherwise eligible either under the PA or HMA programs. If the measures are the same type as those eligible for HMA funding, they must meet a need for governmental services and functions or eligible PNP services and functions in the area affected by the incident.

If the Alternate Project involves construction, the Applicant must obtain FEMA approval prior to the start of construction as FEMA must ensure that it complies with appropriate EHP laws, regulations, and EOs.[322]

The Applicant may not use Alternate Project funds to:

- Meet budget shortfalls;
- Create a new community plan;

[319] 44 C.F.R. § 206.203(d)(1).
[320] portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs.
[321] 44 C.F.R. § 206.203(d)(2)(iv).
[322] 44 C.F.R. § 206.203(d)(2)(v).

- Landscape;
- Pay for operating expenses;[323]
- Purchase supplies, furniture, or equipment costing less than $5,000 per unit;
- Pay the non-Federal share of any PA project;[324]
- Fund buyouts for mitigation, such as acquisition of flood-prone property to create open space;
- Supplement funds on projects that utilize other Federal agency grants; or
- Fund a project located in a FEMA-designated floodway.

C. Disposition of Original Facility

For Alternate and Alternative Procedures Projects, if the Applicant does not repair, replace, or sell the damaged facility for which the capped project funding was based, and that facility is unsafe if not repaired, the Applicant must render the facility safe and secure (e.g., by restricting access, locking doors and windows, constructing a fence around the property) or demolish it.

If the Applicant receives funds for salvaged components of the facility, FEMA adjusts the capped project by the value or anticipated fair market value of salvaged materials less the estimated costs necessary to demolish the facility, grade the site, or make the facility safe and secure.

For any action at the original site, such as demolition, that is completed using PA funds, FEMA must conduct an EHP review. However, if the Applicant completes the work at the original site using non-PA funds, a FEMA EHP review is not required.

If the Applicant opts to keep a damaged facility for a later use, the facility may be eligible for PA funding in future incidents, provided the Applicant repaired the facility in accordance with current codes and standards, and completed any mitigation measures that FEMA included in the original SOW prior to the incident.

IX. Eligibility Considerations by Facility

This section details the types of facilities captured within each category of work along with specific eligibility criteria related to one or more of the facilities within each category. See Appendix N: *Work Eligibility Considerations by Type of Facility* for a summary of eligibility by facility type.

A. Roads and Bridges (Category C)

Roads may be paved, gravel, or dirt. Road components include, but may not be limited to:

- Surfaces;
- Bases;
- Shoulders;
- Ditches;
- Drainage structures, such as culverts;
- Low water crossings; and

[323] Ibid.
[324] Ibid.

- Associated facilities, such as lighting, sidewalks, guardrails, and signs.

Bridge components include, but may not be limited to:

- Decking;
- Guardrails;
- Girders;
- Pavement;
- Abutments;
- Piers;
- Slope protection;
- Approaches; and
- Associated facilities, such as lighting, sidewalks, and signs.

Permanent Work to restore roads and bridges is eligible unless restoration is under the specific authority of another Federal Agency such as FHWA. However, for Tribal governments specifically, although BIA or FHWA may have authority to provide Permanent restoration of public Tribal roads, such roads may be eligible for PA funding provided the Tribal Government does not receive funding from BIA or FHWA for the same work.

FHWA has authority to restore public roads under the Emergency Relief (ER) Program.[325] Roads that are eligible for ER assistance are identified as Federal-aid routes, which include highways on the Federal-aid highway system and all other public roads not classified as local roads or rural minor collectors. The ER Program is activated separately from Presidential declarations under the Stafford Act and may not be activated for all incidents. Federal-aid routes are ineligible for Permanent Work even if the ER Program is not activated or if the program is activated but FHWA does not provide funding for the work. FHWA also has authority to assist with restoration of transportation facilities under the Emergency Relief for Federally Owned Roads Program (ERFO).[326]

Private roads are those that are not owned or operated by or otherwise the legal responsibility of a Federal or SLTT entity (including orphan roads, roads in gated communities, homeowners' association roads, etc.). These roads are ineligible. However, roads owned by a Tribal government may be eligible even if they are not open to the general public.

Work to repair scour or erosion damage to a channel or stream bank is eligible if the repair is necessary to restore the structural integrity of an eligible road, culvert, or bridge. Earthwork in a channel or stream embankment that is not related to restoring the structural integrity of an eligible facility is ineligible.

1. Maintenance

The incident may cause minor damage to roads that result in damage similar to that which may occur over time from other causes, such as the age of the road, traffic flow, and frequent rain. Costs related to maintenance of roads are ineligible. Therefore, distinguishing between pre-existing damage and damage caused by the incident is often difficult. For the repair of this type

[325] www.fhwa.dot.gov/programadmin/erelief.cfm.
[326] flh.fhwa.dot.gov/programs/erfo/.

of damage to be eligible, the Applicant must demonstrate that the damage was directly caused by the incident.

When evaluating eligibility of reported road damage, in addition to evaluating how the incident caused the damage, FEMA reviews maintenance records or documentation establishing that the Applicant has a routine maintenance program. In the absence of maintenance records, FEMA reviews material purchase invoices and activity logs and inspects other sections of the Applicant's road system to confirm the performance of regular maintenance activities.

Work to repair potholes or fatigue cracking is usually ineligible as this type of damage is rarely caused directly by one incident.

B. Water Control Facilities (Category D)

Water control facilities are those facilities built for the following purposes:

- Channel alignment;
- Recreation;
- Navigation;
- Land reclamation;
- Irrigation;
- Maintenance of fish and wildlife habitat;
- Interior drainage;
- Erosion prevention;
- Flood control; or
- Storm water management.

They include:

- Dams and reservoirs;
- Levees and floodwalls;
- Lined and unlined engineered drainage channels;
- Canals;
- Aqueducts;
- Sediment and debris basins;
- Storm water retention and detention basins;
- Coastal shoreline protective devices;
- Irrigation facilities;
- Pumping facilities; and
- Navigational waterways and shipping channels.

1. Restoring the Capacity of Channels, Basins, and Reservoirs

Restoring the pre-disaster carrying or storage capacity of engineered channels, debris and sediment basins, storm water detention and retention basins, and reservoirs may be eligible, but only if the Applicant provides documentation to establish:

- The pre-disaster capacity of the facility; and
- That the Applicant maintains the facility on a regular schedule.

If the Applicant chooses to remove non-incident-related material along with that deposited as a result of the incident, the project is considered an Improved Project.

Documentation Supporting Pre-disaster Capacity

Survey data that is either *recent* or covers a multi-year period to substantiate the amount of new material reasonably attributable to the incident.

Documentation Supporting Regular Maintenance

Written maintenance plan and/or activity logs documenting regular intervals of activity. Applicant logs documenting clearance of blockages in response to resident complaints are not sufficient to substantiate a regular maintenance schedule.

2. Flood Control Works

Flood control works are those structures such as levees, flood walls, flood control channels, and water control structures designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water levels.

Generally, flood control works are under the authority of USACE or NRCS and restoration of damaged flood control works under the authority of another Federal agency is ineligible. Flood control works under the specific authority of NRCS are those that are part of the Watershed and Flood Prevention Operations (WFPO) Program under PL 83-566.[327]

Secondary levees riverward of a primary levee are ineligible, unless the secondary levee protects human life.

C. Buildings and Equipment (Category E)

Buildings, including:

- All structural and non-structural components, including mechanical, electrical, and plumbing systems;
- Contents and equipment within the building; and
- Furnishings.

Equipment includes:

- Vehicles; and
- Construction equipment.

Repair or replacement of buildings and equipment is eligible.

[327] www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo.

1. Buildings

A Public Housing Authority facility is only eligible for Permanent Work if Congress does not appropriate funds to HUD for emergency capital needs for the facility.

For buildings and building systems, distinguishing between damage caused by the incident and pre-existing damage may be difficult. Before making an eligibility determination, FEMA considers each of the following:

- Evidence of regular maintenance;
- Evidence of pre-disaster condition, such as interior water stains from a leaky roof (in such cases, FEMA evaluates whether the roof was repaired prior to the incident);
- The severity and impacts of the incident; and
- Whether the Applicant took prudent actions to prevent additional damage.

Mold remediation and removal of mud, silt, or other accumulated debris is eligible as Permanent Work when conducted in conjunction with restoration of the facility.

(a) Earthquake Damage to Welded Steel Moment Frame Buildings

FEMA has specific eligibility criteria for evaluating and repairing earthquake damage to buildings constructed with welded steel moment frames. FEMA bases the eligibility criteria on *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352).[328]

The repair of the damaged frame connections to pre-earthquake design in accordance with FEMA 352, Chapter 6, is eligible, but only if FEMA approves a specific SOW for the repairs prior to the Applicant performing the work. Repair of the architectural finishes and fire retardants removed in the area of the damage are also eligible.

2. Equipment and Supplies

Repairing damaged—or replacing destroyed—equipment and supplies with the same number of equivalent items is eligible.[329] Equivalent items are similar in age, condition, and capacity.

The Applicant may replace equipment or supplies with different items used for the same general purpose. However, FEMA caps the eligible cost at the estimated amount for items equivalent to those damaged.

When equipment is not repairable, FEMA uses "blue book" values or similar price guides to estimate the eligible cost.

When a used item is not reasonably available (within a reasonable cost, time, or distance) or does not meet applicable national consensus standards, the purchase of a new item with similar capacity is eligible.

If the cost to replace the item is less than the cost to repair it, FEMA limits PA funding to the replacement cost.

Terminology

Consensus standards are standards that have been adopted by a nationally recognized standards-producing organization.

[328] www.fema.gov/media-library/assets/documents/747.
[329] 44 C.F.R. § 206.226(h).

3. Files

Eligible activities associated with the recovery of files include, but are not limited to:

- Recovery of damaged hard copies;
- Stabilizing the damaged hard copies;
- Sanitizing damaged hard copies;
- Photocopying or scanning damaged hard copies to re-establish files; and
- Recovering data from water-damaged computer hard drives.

Recovery of damaged hard copies includes labor and materials, such as bags, boxes, and containers. Stabilizing damaged hard copies includes freeze-drying. Photocopying or scanning includes labor and materials such as new folders and paper.

Not all activities are eligible. Examples of ineligible activities include:

- Establishing new information databases;
- Manually entering data that was lost in damaged computers;
- Scanning re-established hardcopy files into computers to create digital files; and
- Deciphering photocopies of damaged hard copies.

4. Research-Related Contents

Reagents and specimen collections are eligible for replacement based on the following criteria.

The number of units of each reagent eligible for replacement is equal to the number lost OR to the number necessary to restore basic research activity, whichever is less.

FEMA reimburses the purchase price from commercial sources or other institutions, whichever is less. The replacement of reagents that are so unique that they are considered an outcome of a research program is ineligible.

Replacing a representative, but not necessarily a whole portion, of a specimen collection may be eligible. To be eligible for replacement, the specimen types should be available for purchase from commercial sources or other institutions and support an ongoing eligible educational or medical program.

Terminology

A **reagent** is a substance used in a chemical reaction to detect, measure, examine, or produce other substances. Some reagents are very common and available for purchase from commercial sources.

A **specimen** is a portion or quantity of material for use in testing, examination, or study, including blood plasma and flesh tissue.

A **specimen collection** is a repository of specimens related to biomedical, marine, or agricultural research.

5. Animals

Animals housed or exhibited in an eligible facility are eligible for replacement with the same number of comparable animals if they are:

- Injured to the extent they are no longer able to function for the intended purpose;
- Killed;
- A destroyed specimen; or
- A damaged specimen that is not recoverable.

The animal is ineligible for replacement if a comparable animal is not available for purchase or the Applicant is unable to obtain a comparable one at a reasonable cost.

Eligible animals may include, but are not limited to:

- Police animals;
- Trained and certified rescue dogs;
- Animals in museums, zoos, or publicly owned nature centers;
- Fish in fish hatcheries;
- Taxidermy specimens (animals preserved and mounted in lifelike representations);
- Animals used by rehabilitation facilities as part of diagnosis or treatment; and
- Laboratory animals used in an active research program.

The replacement of animals on loan to an eligible facility at the time they are destroyed is eligible if the Applicant substantiates legal responsibility.

Additionally, FEMA may provide PA funding for actions taken to save the lives of these animals as a Category B emergency protective measure.

(a) Determining Costs

The estimated cost to replace an animal is usually determined through market surveys. Costs associated with acquiring donated, loaned, or wild animals as replacement animals are eligible if they do not exceed the estimated cost of purchasing a comparable animal.

When a destroyed animal is replaced through a donation or loan of a comparable animal, costs associated with the purchase of another comparable animal are ineligible.

For laboratory animals, eligible costs associated with replacement include, but are not limited to, the replacement cost of a laboratory animal that is as genetically close as possible to, but does not exceed, the genetic progression of the lost animal AND can be reasonably procured commercially. If an identically genetic animal is not available, the eligible cost is based on a readily procured animal that is as genetically close as possible to the original animal. The Applicant, using its scientific research staff, an independent member of the scientific community, or a certified expert, needs to make reasonable decisions on the genetic likeness of the replacement lab animals.

Ineligible costs associated with replacing laboratory animals include:

- The cost of reproducing a new animal with all the characteristics of the lost animal to re-establish research;
- The cost of using a laboratory to perform a breeding program to advance benchmark stock to the genetic changes lost because of the incident;
- The cost associated with surgery required to replace a surgically altered animal; and
- The cost associated with the replacement of a laboratory animal when an animal of similar genetic characteristics can be obtained at no cost from other researchers or institutions.

If the Applicant requests, and the Recipient approves, other than in-kind and exact number of replacement animals, FEMA caps the Federal share based on the estimated in-kind replacement costs.

6. Irreplaceable Collections and Individual Objects

Collections and individual objects are artifacts, specimens, artworks, archives, public records, and other items that are often considered irreplaceable because of their artistic, educational, historic, legal, scientific, or social significance. They are nonliving and, therefore, do not include animals or plant material, and are usually one-of-a-kind. Eligible collections and individual objects may be in storage or on display in a public or PNP facility and may include items located outdoors, such as sculptures and public art installations.

Documentation Supporting Classification as Collection or Individual Object

Documentation of collections and individual objects generally include accession, catalog, and inventory documentation. Applicants should submit all associated documentation along with a clear title to all items.

Stabilization of damaged collections or individual objects is eligible. Stabilization is a series of treatment measures to maintain the integrity of a collection or object and to minimize deterioration. Stabilization involves taking the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the incident. This includes:

- Treating damaged items through proper environmental controls, such as temperature and humidity; and
- Chemical or mechanical cleaning to stabilize items to prolong their existence, maintain their integrity, and minimize further deterioration from the damaging effects of the incident.

Additional treatment beyond stabilization is eligible if it is necessary to maintain the integrity of the collection or object and return it to its pre-disaster function.

In some cases, costs associated with restoring an item to pre-disaster—but not original—condition may be eligible. For example, repairing a tear in a painting that was a direct result of the incident may be eligible, whereas costs to remove signs of pre-disaster aging, such as layers of old varnish, are ineligible.

Costs associated with the development of a treatment plan for a damaged collection or individual object are eligible. Treatment needs to be conducted by qualified

Terminology

Archives are materials created or received by a person, family, or organization, public or private, and preserved because of the enduring value they contain, or as evidence of the functions and responsibilities of their creator, especially those materials maintained using the principles of provenance, original order, and collective control.

Accession is formal process used to legally accept and record a specimen or artifact as a collection item.

A **catalog** is a full record of information specific to an item and cross-referenced to other records and files, including identification and documentation of the material.

Stabilization is a series of treatment measures intended to maintain the integrity of a collection or object and to minimize deterioration. It involves the minimum steps necessary to return a collection or object to a condition in which it can function in the same capacity as it did prior to the disaster.

Conservation is the preservation of a collection or object for the future. Conservation activities include examination, documentation, treatment, and preventive care, supported by research (e.g., scholarly and technological, x-rays, paint sampling) and education.

Special library collections typically include unique, rare printed books, first editions (often author-signed), manuscripts, archives, artifacts, photos, engravings, graphics, music, and ephemera, as well as limited edition print runs of special collections of maps or other important topics.

conservation professionals with the appropriate specialty and in accordance with the American Institute for Conservation Code of Ethics and Guidelines for Practice.[330] FEMA, in consultation with the Recipient and Applicant, may recommend no treatment when non-intervention best serves to promote the preservation of damaged items.

Collections and individual objects damaged to the extent that stabilization is not practicable or possible are considered destroyed. Replacement of destroyed collections or individual objects is ineligible.

Restoring materials, equipment, and exhibition furnishings associated with the storage, display, preservation, or exhibition of collections and individual objects is eligible. These may include, but are not limited to:

- Equipment regulating temperature or humidity;
- Exhibit panels;
- Models; and
- Video and audio equipment.

7. Library Books and Publications

Replacement of damaged or destroyed library books and publications is eligible based on the pre-disaster inventory of the quantities of the books and publications. Re-shelving, cataloging, and other work incidental to the replacement of library books and publications is also eligible.[331]

However, special library collections, including rare books, manuscripts, and other fragile materials, are only eligible for treatment, not replacement.

D. Utilities (Category F)

Utilities include:

- Water storage facilities, treatment plants, and delivery systems;
- Power generation, transmission, and distribution facilities, including, but not limited to, wind turbines, generators, substations, and power lines;
- Natural gas transmission and distribution facilities;
- Sewage collection systems and treatment plants; and
- Communication systems.

1. Right-of-Way Clearance

The Applicant may need to clear its ROW to obtain access to repair a utility. It is the Applicant's responsibility to maintain its ROW. FEMA may fund limited clearance of incident-related debris from the ROW to enable access to the facility. Additionally, if trees in the vicinity of the facility were damaged by the incident and an arborist confirms that the trees cause an immediate threat of further damage to the facility (e.g., overhead power lines), FEMA may provide PA funding to remove those trees. Any further clearance of debris in the ROW is ineligible for FEMA funding.

[330] www.culturalheritage.org/about-conservation/code-of-ethics.
[331] 44 C.F.R. § 206.226(i).

2. Power: Transmission and Distribution System Conductor Replacement

For electrical transmission or distribution systems, determining the disaster-related damage to some components, such as poles, guys, and cross-arms, can usually be accomplished by visual inspection. However, determining the full extent of disaster-related damage to conductors is more challenging, particularly with older systems. A conductor is eligible for replacement when it is stretched beyond the point where it can be effectively repaired and re-sagged to meet appropriate clearances, sag, and tension, and to meet pre-disaster reliability.

Conductor Spans

The number of conductor spans is calculated by multiplying the number of conductors per span by the number of spans.

For example, a three-phase line section with three spans has 12 conductor spans:

4 conductors x 3 spans = 12

If a single conductor span has damage in more than one location, it only counts as one damaged conductor span. Similarly, if more than one conductor is damaged, it still only counts as one damaged span.

A conductor is only eligible for replacement (reconductoring) when the Applicant cannot effectively repair it because one of the following exists within a line section:

- Twenty-five percent or more of the conductor spans have visible damage, such as broken strands, splices, or sleeves (installed as a result of the incident) or severe pitting, burns, or kinks;
- Thirty percent or more of the line spans are visually stretched (out of sag), or do not meet clearance requirements such as conductor-to-conductor or conductor-to-ground clearance;
- Forty percent or more of the supporting poles need to be replaced or plumbed (straightened). A pole is considered to be in need of straightening if it is leaning such that it is unsafe to climb;
- Forty percent or more of the supporting structures (other than poles) have damage such as broken cross-arms, braces, ties, insulators, guys, pulled anchors, or bent pins. If more than one element of the support structure is damaged, it still only counts as one damaged support structure. If a pole is counted under the previous bullet, FEMA does not count the supporting structure under this criterion;
- Sixty-five percent or more of any combination of the damage described in the bullets above; or
- Evidence provided by a licensed Professional Engineer that demonstrates the conductor is damaged beyond repair.

Terminology

A **line section** is a group of contiguous spans selected for evaluation. A span is the distance between two poles or structures.

The Applicant has flexibility in defining a line section. A line section can be:

- A single span
- All the spans between two dead-end structures
- All the spans on a feeder
- All the spans on a tap
- Any other group of contiguous spans that are evaluated together

If the Applicant provides sufficient documentation establishing the pre-disaster condition and a line section of its system meets one of the six criteria above, that line section is eligible to be reconductored.

The use of #2 Aluminum Conductor Steel Reinforced (ACSR) is considered a lower cost alternative to replacing conductor with equal or lesser amperage capacity such as copper weld conductor, hard and soft drawn copper wire, smaller ACSR, and Amerductor. Therefore, if a conductor with equal or lesser amperage capacity to #2 ACSR is eligible for reconductoring, the line section is eligible to be replaced with #2 ACSR. When the Applicant replaces conductor with #2 ACSR, adjustments to other components of the electric distribution and transmission systems to accommodate #2 ACSR, including, but not limited to, adjusting span lengths between utility poles and increasing pole heights and standards to meet appropriate design requirements are eligible. The Applicant does not need to cite a code or standard for this additional work even though the appropriate design requirements may come from Federal or SLTT codes or standards, including National Electrical Safety Code or Rural Utilities Service (RUS) standards.

If the Applicant prefers to reconductor a line with conductor of lesser amperage capacity than #2 ACSR, such as #4 ACSR (including associated adjustments in span lengths and pole heights), FEMA provides PA funding for the work if the cost is less than the cost of reconductoring with #2 ACSR (including associated adjustments in span lengths and pole heights).

Documentation Supporting Pre-disaster Condition of a Conductor

To document the pre-disaster condition of a conductor, the Applicant should provide the following information:

- A signed, dated, and stamped letter from a licensed professional engineer who has direct experience with the damaged electrical transmission or distribution system certifying the pre-disaster capacity and condition of the conductor along with records providing satisfactory evidence of the pre-disaster capacity and condition of the conductor. Records may include, but are not limited to, maintenance records, contract documents, work orders, inspection logs, or a description of past inspection and maintenance activities certified by a licensed professional engineer.
- If available, copies of construction work plans demonstrating the utility's past practices and current and future projects.
- If required by RUS, a copy of any corrective action plans submitted to RUS in compliance with 7 C.F.R. §1730.25, Corrective action (RUS borrowers only).
- Staking sheets.

If the Applicant provides the information above, FEMA does not require further documentation to establish pre-disaster condition. The Applicant is not precluded from substantiating the pre-disaster condition with other documentation if it is unable to provide the documentation described above.

If the Applicant plans to upgrade its conductor to an amperage capacity above #2 ACSR, and there is no code or standard requiring the upgrade that meets the eligibility requirements discussed in B, the additional upgrades are ineligible and the Applicant must request an Improved Project.

If the damage does not meet the criteria for replacement, only the repair of the damaged line section(s) is eligible.

E. Parks, Recreational, Other (Category G)

Eligible publicly owned facilities in this category include:

- Mass transit facilities such as railways;
- Beaches;
- Parks;
- Playground equipment;
- Swimming pools;
- Bath houses;
- Tennis courts;
- Boat docks;
- Piers;
- Picnic tables;
- Golf courses;
- Ball fields;
- Fish hatcheries;
- Ports and harbors; and
- Other facilities that do not fit in Categories C–F.

Unimproved natural features are ineligible.

Plantings (such as trees, shrubs, and other vegetation) are eligible when they are part of the restoration of an eligible facility for the purpose of erosion control, to minimize sediment runoff, or to stabilize slopes, including dunes on eligible improved beaches.

Grass and sod replacement are eligible if it is an integral part of the restoration of an eligible recreational facility. Vegetation replacement is also eligible if necessary to restore the function of the facility (e.g., if vegetation is a component of a sewage filtration system).

Plantings required to mitigate environmental impacts, such as those required to address impacts to wetlands or endangered species habitat, are only eligible if required by a Federal or SLTT code or standard or permit that meets the criteria described in Chapter 8:III.H. *Permit Requirements*.

Long-term monitoring to ensure vegetative growth is ineligible even if it meets the requirements above.

Plantings ineligible for replacement include, but are not limited to:

- Replacement of trees, shrubs, and other vegetation;
- Replacement of destroyed crops; and
- Cosmetic or aesthetic vegetation, such as landscaping around public facilities or in median strips along roadways. This restriction applies even when the vegetation is damaged during performance of eligible work, such as when repairing underground utilities within landscaped areas.

1. Beaches

Replacement of sand on beaches is only eligible under certain conditions.[332] A beach is considered an eligible facility when all of the following conditions exist:

- The beach is not a federally constructed shoreline under the specific authority of USACE (i.e., not a specifically authorized and constructed Coastal Storm Risk Management Project);[333]
- The beach was constructed by the placement of imported sand—of proper grain size—to a designed elevation, width, and slope;[334] and
- The Applicant has established and adhered to a maintenance program involving periodic renourishment with imported sand to preserve the original design or a specific engineered design that is justified and clearly stated in the maintenance program.[335] Placement of sand under the following circumstances does not meet this requirement:
  - Emergency or "one-time" nourishment, even if to a design;
  - Emergency or "as-needed" renourishments when the beach has eroded to a critical condition where all original nourishment is gone;
  - Partial renourishments or "hot-spot" nourishments; or
  - Renourishment using material from a channel maintenance project when dredge spoils do not meet compatibility design criteria and the amount placed is dependent on the amount dredged, not the beach design.

Documentation Supporting Eligibility of a Beach

To document eligibility of a beach as a designed and maintained facility, the Applicant **must** provide the following information (all required unless the beach was previously determined eligible, in which case FEMA may request only a portion of this information):

- Design studies, plans, construction documents, and as-builts for the original nourishment;
- Documentation and details of the maintenance plan, including how the need for renourishment is determined and funded; and
- Renourishment history, design studies, and as-builts for every renourishment, including construction documents if applicable.

[332] 44 C.F.R. §§ 206.226(j) and 206.201(c).
[333] 44 C.F.R. § 206.226(a).
[334] 44 C.F.R. § 206.226(j)(2)(i).
[335] 44 C.F.R. § 206.226(j)(2)(ii).

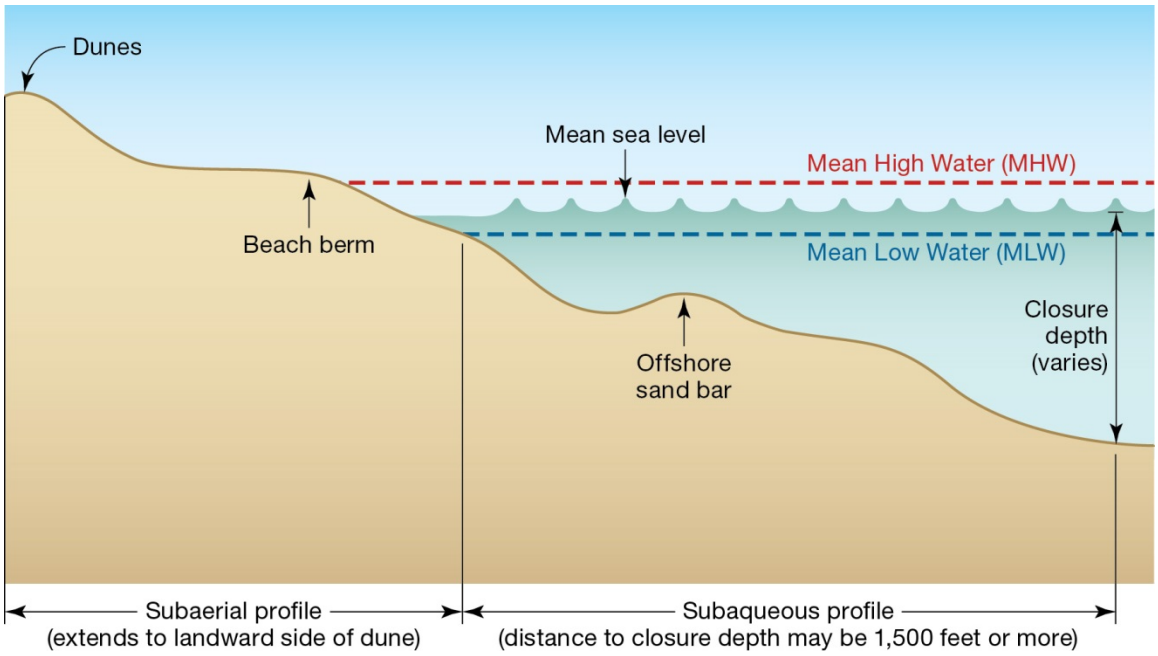


Figure 16. Typical Beach Profile

The amount of sand eligible for replacement is limited to the amount lost due to the incident. The Applicant needs to substantiate the amount of sand claimed with pre-and post-incident profiles that extend at least to the seaward edge of the sub-aqueous nearshore zone (Depth of Closure) (see Figure 16. *Typical Beach Profile*). If pre-storm profiles are not available, documentation may include design documents and renourishment history. The Applicant needs to adjust quantities to account for any erosion that occurred between the pre- and post-incident profiles.

Replacing sand that eroded prior to the incident is ineligible. However, the Applicant is encouraged to renourish the project to achieve the design profile.

F. Landslides and Slope Stabilization

If an eligible facility is located on a slope and is damaged as a result of a landslide or slope instability triggered by the incident, FEMA determines the stability of the slope that supports the facility before it approves PA funding to restore the facility. Restoration of the integral ground that supports the facility may also be eligible. The impact of slope stability on eligibility is as follows:

Terminology

Integral ground refers to only the ground necessary to physically support a facility.

Integral ground may be natural or improved ground upon which an eligible facility is located and that is essential to support the structural integrity and utility of the facility.

- If the site is stable, permanent restoration of the facility and its integral ground is eligible.
- If the site is unstable and there is no evidence of pre-disaster instability after the facility was constructed, permanent restoration of the facility and its integral ground is eligible, including measures to stabilize the integral ground.
- If the site is unstable and there is evidence of pre-disaster instability after the facility was constructed, restoration of the facility's integral ground is ineligible. Restoration of the

facility is eligible only upon the Applicant stabilizing the site and restoring the integral ground.

Site inspections and limited geotechnical assessments to determine site stability and to obtain a technical opinion of the cause of the slope failure are eligible.

Permanent repair to stabilize natural ground that is not integral to an eligible facility's function is ineligible.

FEMA may approve permanent relocation of the facility if the facility is subject to repetitive heavy damage and relocation is cost-effective. Eligible costs for relocation are described in Chapter 8:VI. *Relocation*.

The Applicant may request an Alternate Project if restoration of the facility is not feasible because of soil instability.

CHAPTER 9: SCOPE OF WORK AND COST DEVELOPMENT

Once FEMA, the Recipient, and the Applicant agree on the damage description and dimensions, either the Applicant submits the SOW and cost for FEMA review and validation, or FEMA submits the project to its CRC to develop the SOW and cost. This is Phase III of the PA Program delivery process, *Scoping and Costing*, and is described in this chapter.

I. Scope of Work Development

For completed work, the Applicant must describe the completed SOW for each of the projects and provide supporting documentation.

For Emergency Work, the SOW includes work required to address immediate threats and to remove debris and must include quantitative information. For Permanent Work, the SOW includes a description of how the Applicant plans to repair, or has repaired, the damage, including repair dimensions and hazard mitigation description and dimensions.

The Applicant should provide the following for each site (not an all-inclusive list):

- ☐ Whether the work is complete;
- ☐ Who performed, or will perform, the work (e.g., force account, contract, etc.);
- ☐ Proposed or completed, repair scope of work, including PA mitigation measures; and
- ☐ Technical studies, reports, and assessments.

II. Cost Development

FEMA or the Recipient assists the Applicant with preparing project applications based on actual or estimated costs.

A. Project Thresholds

FEMA establishes a minimum project threshold for each Federal fiscal year. The threshold applies to incidents declared within that fiscal year and is based on the Consumer Price Index. If a project application totals less than the minimum threshold[336] after the Applicant has accounted for all project costs—including insurance proceeds and other reductions to avoid duplication of benefits—the project is ineligible.[337]

The minimum threshold applies to each project application and not to each damage line item. FEMA does not combine work among several sites onto one project application for the **sole** purpose of reaching the minimum threshold. Because of the administrative cost involved, FEMA does not process project applications under the minimum threshold unless the

Small Project Preparation

If the Applicant prepares its own Small Projects, it **must** submit them to FEMA for validation within 60 days of the Recovery Scoping Meeting.

[336] The minimum threshold is available at: www.fema.gov/public-assistance-indicator-and-project-thresholds.
[337] 44 C.F.R. § 206.202(d)(2).

Applicant is eligible, is disputing the SOW or costs, and is planning to appeal an amount that would increase the project amount to at least the minimum threshold. The minimum threshold does not apply to Donated Resources or Management Costs; however, these projects are only eligible when the donated resources or management costs are related to an eligible project that meets the minimum threshold.

FEMA also establishes a dollar threshold each Federal fiscal year for the implementation of Simplified Procedures under Section 422 of the Stafford Act. This threshold defines a project as large or small.[338]

- A Large Project has costs equal to or greater than the threshold.
- A Small Project has costs below the threshold.[339]

The threshold applies to incidents declared within that fiscal year. FEMA administers funding for Large and Small Projects differently. For Large Projects that are not capped, FEMA adjusts any estimated costs to the actual incurred amount so that the final approved funding is based on actual costs.[340] For Small Projects, FEMA does not adjust estimated costs to the actual incurred amount.[341] FEMA determines whether a project is large or small based on the final approved amount of eligible costs after any cost adjustments, including insurance reductions.

B. Expedited Projects for Emergency Work

FEMA may provide expedited funding for Emergency Work Projects (Category A or B) that meet or exceed the Large Project threshold. FEMA funds Expedited Projects at 50 percent of the Federal share of the estimated project cost. Requests for Expedited Projects must be submitted to FEMA within 60 days of the Applicant's Recovery Scoping Meeting. To support its request, the Applicant must provide enough information for FEMA to validate that the work and costs are eligible. FEMA will work to obligate funding within 90 days of receipt of the request. Therefore, the PA Group Supervisor notifies the CRC as soon as possible after receiving a request.

The Applicant must substantiate its legal responsibility for the work. The Applicant needs to provide the following broken down by the Applicant's monthly (or bi-weekly) operational periods (if Category A or B has an increased Federal cost share for a limited timeframe, the Applicant needs to separate work anticipated to be completed within the increased cost share timeframe from work anticipated to be completed after the increased cost share period (See Chapter 6:XIII. *Increased Federal Cost Share for a Limited Timeframe*):

- A detailed description of the work and documentation to substantiate that the work is eligible. This includes:
    - Description of immediate threat;
    - Detailed description of work activities;
    - Work locations; and
    - Additionally, for debris: estimated quantities by type of debris substantiated with photographs or video, temporary staging and disposal locations with copies of permits and reduction methods.

[338] The project threshold amount is available at: www.fema.gov/public-assistance-indicator-and-project-thresholds.
[339] Stafford Act § 422, 42 U.S.C. § 5189; 44 C.F.R. § 206.203(c).
[340] 44 C.F.R. § 206.205(b).
[341] 44 C.F.R. § 206.205(a).

- The total estimated cost with documentation to support the basis of the estimate and substantiate that the cost estimate is reasonable. This includes:
    - Insurance documentation
    - For Force Account labor or other hourly labor costs such as mutual aid labor:
        - Number of personnel;
        - Average hours per day;
        - Average days per week;
        - Average pay rate;
        - Lodging and per diem rates; and
        - Mutual Aid Agreement, Memorandum of Understanding or other written agreement
    - For Force Account equipment:
        - Amount of equipment by type;
        - Average hours per day;
        - Average days per week; and
        - Hourly rate
    - For rented equipment:
        - Rental agreement with pricing
    - For contract work:
        - Request for proposals, bid documents, contracts;
        - If bids have not yet been received, the Applicant may submit a unit price estimate; and
        - Debris monitor information

FEMA estimates the work based on cost information provided by the Applicant. If the Applicant does not provide sufficient cost information, FEMA may use average historical pricing. For contracted work, FEMA uses the unit cost from the contract if it determines the costs are reasonable; however, this is only for the purpose of expediting funding based on an estimate. FEMA reviews the Applicant's procurement and contracting for compliance and addresses any noncompliance prior to final reconciliation and closeout of the project.

FEMA provides the Federal cost share for the remaining 50 percent of the project cost once the Applicant provides all of the documentation required to support the estimated project cost for a non-Expedited Project.

C. Costs for Projects with All Work Completed

For projects with all work complete, the PDMG works with the Applicant to:

- Answer programmatic, EHP, insurance, and hazard mitigation questions;
- Identify information and documentation requirements; and
- Address contextual information needed for supporting the Applicant's claim for completed work.

Once work on a project is 100% complete, the Applicant must submit documentation for the project within 90 days of the Recovery Scoping Meeting or within 90 days of the work completion date, whichever is later, regardless of whether the project has been obligated. FEMA makes its eligibility determination and processes the project based on the documentation

received within the 90-day deadline.[342] FEMA denies assistance for work and costs that are not supported with documentation by this deadline. There may be cases where, during review of the documentation submitted, FEMA determines additional information or explanation is required. In this instance, FEMA may generate an RFI specifying a deadline for response.

Terminology

Work Completion Date is the date the Applicant completes all work associated with the approved SOW including meeting all compliance requirements. It does not include invoice payments, warranty periods, or grant management activities (e.g., compiling and submitting documentation, financial reconciliation, requesting payment, etc.).

For Small Projects, FEMA may accept certification in lieu of documentation and may process the projects based on estimated costs even if all work is completed.[343] However, with exception of the scenarios listed in Chapter 12:I.A. *Small Projects*, Small Project estimates are not subsequently adjusted to reflect actual costs. The Applicant must still retain documentation for Net Small Project Overrun appeals and audits.

D. Estimating Emergency Work Projects with Work to be Completed

Emergency Work Projects are often difficult to estimate due to the type of work conducted. Unlike Permanent Work, where a detailed SOW is usually determined and estimated with unit pricing in advance, the detailed scope of work to address Emergency Work is often unknown and therefore, difficult to estimate in advance. Additionally, emergency response activities do not generally have established unit pricing and have a lot of variables that can impact pricing. If the Applicant provides sufficient information, FEMA may process Emergency Work Projects based on estimates.

E. Estimating Permanent Work Projects with Work to be Completed

When work is not yet complete, FEMA determines the amount of PA funding based on the estimated cost to restore the damaged facility to its pre-disaster design and function, including eligible codes and standards. The amount may include a reasonable amount of anticipated soft costs but does not include costs that are only related to, or only triggered by, changes to the pre-disaster design or function of the damaged facility. These include, but are not limited to, costs related to:

- Engineering and design;
- EHP compliance; and
- Work required by codes or standards.

If FEMA developed the SOW, it also develops the associated cost estimate.

1. Projects Requiring Engineering Analysis

Some projects may require an engineering analysis to determine the method of repair. In these cases, FEMA may provide PA funding for engineering and design services.

[342] 44 C.F.R. § 206.205(b)(1) and 2 C.F.R. § 200.343.
[343] Stafford Act § 422, 42 U.S.C. § 5189; 44 C.F.R. § 206.205(a).

2. Applicant Estimates

FEMA accepts an Applicant-submitted cost estimate if the estimate:

- Is prepared by a licensed Professional Engineer or other estimating professional, such as a licensed architect or certified professional cost estimator[344] who certifies that the estimate was prepared in accordance with industry standards;
- Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage;
- Is based on unit costs for each component of the SOW and not a lump sum amount;
- Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon SOW;
- Is based on the current phase of design or construction inclusive of any known costs;
- Includes actual costs for work completed at the time the cost estimate is developed; and
- Is reasonable.

FEMA evaluates Applicant-submitted estimates for reasonableness based on the criteria in Chapter 6.I. Reasonable Costs using the checklist in Appendix L: *Validation of Applicant-Provided Cost Estimates*.

3. FEMA Estimates

When FEMA develops cost estimates for sites with Permanent Work that is less than 90 percent complete and total costs are expected to meet or exceed the Large Project threshold, FEMA uses the CEF in accordance with the CEF Instruction Guide[345] The CEF Instructional Guide defines various factors and the range of percentage values that FEMA may apply to projects. In rare cases, a factor may need to be reviewed or adjusted. FEMA Headquarters has access to technical assistance to review the appropriate ranges for factors. Only FEMA Headquarters has the authority to approve the use of factors that exceed the CEF specified range or approve additional factors. FEMA will include the CEF contingency factor "Applicant Reserve for Change Orders" but will not include any additional factors or risk premiums associated with capped projects (Improved, Alternate, or Alternative Procedures Projects).

4. Expert Panel Review

A FEMA-funded,[346] independent third-party panel of cost estimating experts may review project estimates. FEMA does not use this panel for appeals. The review is limited to issues pertaining to the estimated cost and the panel does not make decisions related to the eligibility of work. However, it may make determinations about whether cost elements are required to execute the SOW. The panel may review cost documentation for completed work, if necessary.

- All project estimates with an estimated Federal share of $25 million or greater are reviewed by the independent panel.
- FEMA may request the independent panel review for any cost estimate.
- The Applicant may request the panel review the estimate for any project with an estimated Federal share of at least $5 million.

[344] In lieu of a license or certification, an individual with professional experience and proficiency in the field of cost estimating may prepare and sign the cost estimate.
[345] www.fema.gov/media-library/assets/documents/25390.
[346] The expert panel is fully funded by FEMA and does not require a non-Federal cost share.

5. Insurance Reductions

FEMA reduces the estimate to account for insurance coverage based on:

- Actual insurance proceeds, if known; or
- Anticipated insurance proceeds based on the Applicant's insurance policy, if the amount of actual proceeds is unknown.

6. Fixed-Cost Offer for Alternative Procedures Projects

FEMA professionally licensed engineers and architects, qualified cost estimators, construction managers, and staff with other technical expertise, as necessary, develop or review and validate estimates for all large Permanent Work Projects. FEMA transmits the estimates as fixed-cost offers to the Applicant via PA Grants Manager for consideration. If the Applicant accepts the fixed-cost offer for a Large Project, it is considered an Alternative Procedures Project.

FEMA approves the fixed-cost amount upon obligation of the project.[347] Once the fixed-cost amount is obligated, FEMA considers it reasonable and eligible, as long as there is no evidence of fraud and the Applicant complies with Federal grant conditions.

The following table summarizes the differences between the Alternative Procedures policy and the standard PA policy:

Alternative Procedures Project	Standard Project
Fixed-cost project with use of excess funds.	Actual cost project. No retention of excess funds associated with the approved estimate.
May use funds across all Alternative Procedure Permanent Work Projects.	Can only use funds toward the specific work identified in each specific project.
After FEMA approves a SOW, approval is only required for changes that involve buildings or structures aged 45 years or older, ground disturbing activities, or work in or near water.	After FEMA approves a SOW, approval is required for any change to the SOW.
Do not need to track costs associated with changes to the SOW (see Chapter 12:I.C. *Alternative Procedures Permanent Work Projects* for closeout requirements)	Must track costs associated with all changes to the SOW.
Do not need to track costs to specific work items. Only need to track the total costs associated with the all of its Alternative Procedures Permanent Work Projects. (see Chapter 12:I.C. *Alternative Procedures Permanent Work Projects* for closeout requirements)	Must track costs specific to each work item within each individual project.
Do not need to track work to specific Alternative Procedures Projects. Only need to substantiate that	Must track all work to each individual project.

[347] Obligation constitutes FEMA's acceptance of the fixed amount.

the work is related to the approved SOW covered across the projects.	

Once the Applicant accepts a fixed cost offer, it may not revert back to a project funded based on actual costs. FEMA does not adjust the fixed amount even if the Applicant discovers hidden damage while conducting approved work. Prior to closing the project, FEMA adjusts the fixed estimate to account for actual insurance proceeds as described in Chapter 6:XVIII.A. *Insurance Proceeds*. Once FEMA and the Applicant agree to a fixed-cost, FEMA will not adjust funding on the basis of reasonableness or eligibility provided the Applicant completes the approved scope of work. This does not preclude de-obligations on the basis of noncompliance with grant conditions, such as environmental or historic preservation; duplication of benefits, including insurance; or evidence of fraud.

If the estimated amount is less than the Applicant is willing to accept as a fixed cost, the Applicant may decline the offer and FEMA will process the project using standard procedures. In these cases, FEMA obligates the project based on the estimated amount in the offer and adjusts funding based on actual eligible costs at closeout.

(a) Fixed Cost Offer Deadlines

The Applicant has up to 18 months from the disaster declaration date to accept a fixed-cost offer for each project (also subject to 30-day deadline from receipt). If the Applicant is requesting hazard mitigation funding, it must determine the actual SOW and hazard mitigation measures to be performed within the 30-day and 18-month deadlines.

Each time FEMA transmits a fixed-cost offer, the Recipient and Applicant have a combined total of 30 calendar days from the date of FEMA's transmittal of the fixed-cost offer to accept the offer (not to exceed the 18-month deadline). FEMA processes projects without accepted fixed-cost offers by the 30-day and 18-month deadlines using standard PA policies and procedures and adjust funding based on actual eligible costs at closeout.

Time extensions to accept fixed-cost offers must be approved by FEMA's Assistant Administrator for Recovery.

III. Compliance Reviews

The CRC conducts a series of reviews for program compliance. The Insurance Specialist reviews the Applicant's insurance documentation, calculates required reductions, and documents insurance obtain and maintain requirements as a condition of the award. FEMA EHP staff review the SOW to determine if the SOW has a potential of impacting environmental or historic resources, FEMA EHP staff review the SOW to determine if modifications would reduce potential impacts. and document the EHP requirements as a condition of the award.

CHAPTER 10: OBLIGATION AND RECOVERY TRANSITION

This Chapter describes the final review and obligation process, the Recovery Transition Meeting, and provides an overview of PA considerations for transitioning field operations back to the Regional office, a PA Processing Center, or a Long-Term Recovery Office. It also includes PA policy on appeals and provides a summary of arbitration. Recipients and FEMA conduct final project reviews in Phase IV: *Final Reviews*. FEMA obligates Projects and transitions recovery roles and responsibilities in Phase V of the PA Program delivery process, *Obligation and Recovery Transition*.

I. Final Review and Obligation

A. Recipient Review

Project applications are routed to the Recipient for review before FEMA conducts the final review. The Recipient reviews project applications to ensure that all of the Applicant's incident-related impacts, repair methods, and costs are properly addressed.

B. Final Review

The PAGS performs the Final Review to verify the work and costs described in the project application are eligible before obligating funds. The final reviewer ensures the cost share is accurate.

If the Federal cost share is greater than $1 million, the final reviewer submits the project application to the Million Dollar Review queue. FEMA notifies Congress and the Department of Homeland Security of project applications with a Federal cost share greater than $1 million before obligation (including subsequent project amendments). FEMA refers to this as the Large Project Notification (LPN) process.

If the Federal share is less than $1 million, the final reviewer submits the project application into a queue where FEMA obligates the Federal share of the eligible project cost to the Recipient.[348] Once obligated, the Project constitutes the official record of the approved SOW for the Project.

C. Obtaining Funds

Strategic Funds Management is FEMA's process for obligating PA funding based on the Applicant's schedule to execute the work. If a Permanent Work Project is greater than $1 million and the Applicant does not need funds for more than 180 days from the time the Project is ready for obligation, FEMA obligates funds based on the project completion schedule. FEMA's *Strategic Funds Management – Implementation Procedures for the Public Assistance Program* (FEMA SOP 9570.24) addresses this obligation process in detail.[349]

[348] 44 C.F.R. § 206.202(e).
[349] www.fema.gov/media-library/assets/documents/30301.

The Recipient is responsible for notifying the Applicant that funds are available[350] and for distributing the funds to the appropriate Subrecipient.[351] Funds that FEMA has obligated are available to the Recipient to pass through to the appropriate Subrecipient.[352]

II. Recovery Transition Meeting

The PDMG coordinates with the Recipient to schedule a Recovery Transition Meeting once the Applicant has signed all of its projects in PA Grants Portal. The transition meeting prepares the Applicant for FEMA's transition of PA Operations from the JFO to the Regional office. The PDMG or Recipient representative contacts the Applicant to coordinate meeting logistics, review discussion topics, and identify appropriate Applicant attendees. FEMA, the Recipient, and the Applicant attend the Recovery Transition Meeting.

FEMA uses this meeting to:

- Ensure all claimed damage is sufficiently and accurately documented;
- Discuss record retention requirements;
- Explain deadlines for completion of work and appeals, including Net Small Project Overruns;
- Ensures the Applicant understands the terms and conditions of the projects (e.g., requirements for environmental and historic preservation, procurement, minimum standards, disposition, etc.);
- Transition primary point-of-contact from field personnel to the Recipient; and
- Discuss questions or concerns.

III. Transition Field Operation to Regional or Recovery Office

This section provides an overview of PA considerations for transitioning from the JFO and CRC environment, in which project application development is the predominant activity, to the post-JFO environment (e.g., Regional Office or Long-Term Recovery Office), where program management and closeout are predominant.

A JFO closes when most FEMA program and FCO goals have been met. The FCO coordinates with the FEMA Region, FEMA Headquarters, the PAGS, and other program leads to determine closure. PA considerations include the number of remaining:

- Project applications to be written;
- Project applications in each review queue; and
- Recovery Transition Meetings.

Once the JFO closes, PA operations are transferred to the Regional Office or to a Recovery Operation. The Region regains primary responsibility for ongoing operations and the CRC maintains its support role to the region until all project applications for the incident have been processed through obligation.

The need for a PA Recovery Operation exists when the JFO is ready to close but too much work remains for the Region to assume full responsibility for the operation or if the Regional Office is

[350] 44 C.F.R. § 206.200(b)(2)(i).
[351] 44 C.F.R. § 206.202(a).
[352] 44 C.F.R. § 206.200(b)(2)(ii).

located too far from the incident location. In this situation, a Recovery Operation is set up to finish remaining project amendments, complete required reviews, resolve outstanding issues, and obligate remaining funds. PA Recovery Operations may include the following:

- PA Processing Center: Established by the respective Regional Office after a small to medium sized disaster when IA is no longer active in the disaster area and the FCO has demobilized; the PAGS may still be active in the Processing Center with oversight provided by the Regional Office; and
- Long-Term Recovery Office: Established by FEMA Headquarters after a large disaster.

Transition from a Recovery Operation to the Regional Office varies by region. It typically occurs when project formulation is complete and outstanding issues have been resolved.

CHAPTER 11: POST AWARD MONITORING

This chapter provides PA policy and procedures on Phase V: *Post Award Monitoring and Amendments*. This includes reporting requirements, post award changes in SOW, work completion deadlines, and audits.

I. Large Project Quarterly Progress Reports

The Large Project Quarterly Progress Report (QPR) is a tool for FEMA and the Recipient to track the progress of Large Projects. FEMA requires the Recipient to report on the status of all open Large Projects on a quarterly basis.[353] Recipients must submit QPRs to FEMA no later than 30 days after the end of each quarter (see Table 6, *Deadlines for Submitting Quarterly Progress Reports*).

The Subrecipient must submit the following for each incomplete Large Project on a quarterly basis:

- ☐ Total expenditures to date;
- ☐ Status of the project (either construction phase or percent complete);
- ☐ Whether the work is complete (per definition in Chapter 11:V. *Work Completion Deadlines*);
- ☐ Projected or actual work completion date (per definition in Chapter 11:V. *Work Completion Deadlines*); and
- ☐ Any circumstances that could delay the project.

In addition to verifying and submitting the Subrecipient's information above, the Recipient must submit the following for each open Large Project on a quarterly basis:

- ☐ Total amount disbursed to the Subrecipient;
- ☐ Whether final payment was made;
- ☐ Whether time extensions were approved; and
- ☐ Latest approved work completion deadline.

Table 6: Deadlines for Submitting Quarterly Progress Reports

Quarter	Dates	Report Due Date
1	October 1 – December 31	January 30
2	January 1 – March 31	April 30
3	April 1 – June 30	July 30
4	July 1 – September 30	October 30

II. Financial Status Reports

Recipients submit Federal Financial Status Reports (FFRs) (SF-425s) quarterly to the respective FEMA Regional Office.[354] The FFR provides the status of funds for the prime award, the

[353] 44 C.F.R. § 206.204(f).
[354] 2 C.F.R. § 200.327.

Recipient's expenditure drawdowns, and whether the Recipient is meeting its cost-share requirements.

III. Federal Funding Accountability and Transparency Act

The Federal Funding Accountability and Transparency Act (FFATA) requires Recipients to register in the FFATA Subaward Reporting System (FSRS) and report on all awards and subawards equal to or greater than $25,000.

IV. Post Award Change in Scope of Work

While proceeding with the project, the Applicant must ensure that it uses PA funding only for eligible work as identified in the Project). The Applicant may identify a need to change the SOW. The Applicant should engage the Recipient and FEMA as soon as it identifies a change to the SOW to allow FEMA time to review changes for eligibility and EHP compliance requirements prior to commencement of work. If the Applicant begins work associated with a change before FEMA review and approval, it jeopardizes PA funding.

A change requires a written request with detailed justification and documentation to support the eligibility of the requested revision.[355] If the request involves previously unreported damage, the Applicant must also provide documentation demonstrating how the incident caused the damage. The Recipient must forward the request to FEMA with its written recommendation.[356] Table 7: *Information to Support SOW Changes*, indicates the information necessary for FEMA to evaluate a request for a change in SOW.

FEMA engages subject matter experts for technical assistance when necessary to reach a determination of whether the requested change is eligible for PA funding.

Changes in SOW due to one of the following reasons are generally eligible:

- Alternate repair method is more cost-effective than the original proposed repair method;
- Original repair method is not technically feasible;
- Increase in previously approved quantities due to errors and omissions;
- Hidden damage discovered during construction and is disaster-related; or
- The Applicant wishes to pursue an Improved or Alternate Project.

[355] 44 C.F.R. § 206.204(e) and 2 C.F.R. § 200.308.
[356] 44 C.F.R. § 206.204(e).

Table 7. Information to Support SOW Changes

Information to Support SOW Changes
Change in SOW requests should be submitted prior to the approved project deadline and include the following (not an all-inclusive list): ☐ Detailed changes to SOW and cost (required) ☐ Reason for changes (required) • If more cost-effective repair: both cost estimates • If original SOW not feasible: supporting documentation such as technical reports • If hidden damage (must be found during performance of eligible work): o Documentation substantiating the damage is related to the declared incident; o Photographs documenting damage; and o Change orders ☐ Construction timeline / project schedule • Time extension, if necessary (include information in Table 8. *Information to Support a Time Extension*)

A. Scope of Work Changes on Permanent Work Alternative Procedures Projects

For Alternative Procedures Projects, once the SOW is approved and a fixed-cost offer is accepted:

- The Applicant must notify FEMA prior to making SOW changes that involve:
    - Buildings or structures that are 45 years of age or older,
    - Ground disturbing activities, or
    - Work in or near waterways.

With exception of buildings or structures that are 45 years of age or older, the Applicant does not need to notify FEMA when it intends to make changes that substantially conform to the approved SOW. Changes that substantially conform include items, such as:

- Substitutions in material type (e.g., pre-cast concrete vs. steel beam, stainless steel vs galvanized fasteners); or
- Interior floor plan reconfigurations (e.g., adding, moving or removing rooms/features).

If the Applicant wishes to change the SOW to the extent that it changes the hazard mitigation, such changes must be approved within the 18-month deadline and the fixed-cost offer amount will be adjusted to reflect the cost of the revised hazard mitigation SOW.

V. Work Completion Deadlines

FEMA only provides PA funding for work completed and costs incurred[357] within regulatory deadlines (see Figure 17. *Work Completion Deadlines*). The deadline for Emergency Work is 6 months from the declaration date. The deadline for Permanent Work is 18 months from the declaration date.[358] FEMA considers these timeframes to be a project's approved POP.

Deadlines for Completion of Work	
Type of Work	Months
Emergency Work	6
Permanent Work	18

Figure 17. Work Completion Deadlines

Work completion is defined as the completion of all work associated with the approved SOW including meeting all compliance requirements. It does not include invoice payments, warranty periods, or PA grant management and administration activities (e.g., compiling and submitting closeout documentation, financial reconciliation, requesting payment, etc.). If the Applicant determines it needs additional time to complete work, it must submit a written request for a time extension to the Recipient with the following information:

- Documentation substantiating delays beyond its control;
- A detailed justification for the delay;
- Status of the work; and
- The project timeline with the projected completion date.[359]

The Recipient has authority to extend deadlines for individual projects based on extenuating circumstances. Except for temporary relocation projects, the Recipient may extend Emergency Work up to an additional 6 months and Permanent Work up to an additional 30 months.[360] The Recipient must notify FEMA when it approves a time extension either via FEMA's systems and reporting mechanisms or written notification.[361]

FEMA has authority to extend individual project deadlines beyond these timeframes if extenuating circumstances justify additional time.[362]

The prime award POP begins on the first day of the incident period and initially extends four years from the declaration date. Project extensions cannot exceed the Recipient's prime award POP. Therefore, the Recipient must request FEMA approval for an extension to the prime award POP if it anticipates project work to extend beyond the end of the prime award POP.[363]

FEMA generally considers the following to be extenuating circumstances beyond the Applicant's control:

- Permitting or EHP compliance related delays due to other agencies involved;
- Environmental limitations (such as short construction window);

[357] 2 C.F.R. § 200.309 and 44 C.F.R. § 206.204(d)(2).
[358] 44 C.F.R. § 206.204(c)(1).
[359] 44 C.F.R. § 206.204(d)(2).
[360] 44 C.F.R. § 206.204(c)(2)(ii).
[361] Per 2 C.F.R. § 200.308(d)(2), for non-construction Emergency Work, the Recipient must notify FEMA at least 10 days prior to the project deadline.
[362] 44 C.F.R. § 206.204(d).
[363] The FEMA Chief Financial Officer must approve the request.

- Inclement weather (site access prohibited or adverse impact on construction); and
- Lack of availability of materials, equipment, or contractors to complete work.

FEMA generally considers the following to be circumstances within the control of the Applicant and not justifiable for a time extension:

- Permitting or environmental delays due to Applicant delays in requesting permits;
- Lack of funding;
- Change in administration or cost accounting system; and
- Compilation of cost documentation.

Although FEMA only provides PA funding for work performed on or before the approved deadline, the Applicant must still complete the approved SOW for funding to be eligible.[364] FEMA deobligates funding for any project that the Applicant does not complete. If the Applicant completes a portion of the approved SOW and the completed work is distinct from the uncompleted work, FEMA only deobligates funding for the uncompleted work. For example, if one project includes funds for three facilities and the Applicant restores only two of the three facilities, FEMA only deobligates the amount related to the facility that the Applicant did not restore.

Table 8: *Information to Support a Time Extension*, indicates the information that the Applicant should submit to support a request for a time extension.

Table 8. Information to Support a Time Extension

Information to Support a Time Extension

Request should be submitted prior to current approved deadline, be specific to one project, and include the following information with supporting documentation:
☐ Dates and provisions of all previous time extensions
☐ Construction timeline / project schedule in support of requested time (required)
☐ Basis for time extension request (required)
• Delay in obtaining permits
  ○ Permitting agencies involved and application dates
• Environmental delays or limitations (e.g., short construction window, nesting seasons)
  ○ Correspondence with various agencies
  ○ Specific details
• Inclement weather (prolonged severe weather conditions prohibited access to the area, or adversely impacted construction)
  ○ Specific details
• Other reason for delay
  ○ Specific details

VI. Audits

Recipients and Subrecipients are subject to Federal and non-Federal audits. Records are subject to audit by State or Territorial government auditors, FEMA, the U.S. Department of Homeland

[364] 44 C.F.R. § 206.204(d)(2).

Security Office of Inspector General, and the U.S. Government Accountability Office (GAO).[365] FEMA may adjust project funding due to audit findings.

A. Single Audits

A Recipient or Subrecipient that expends $750,000 or more in Federal funds during its fiscal year must perform a single or program-specific audit.[366]

B. Government Accountability Office

The GAO is the investigatory arm of Congress and is under the direction of the Comptroller General of the United States. GAO is an independent, nonpartisan agency that investigates how the Federal Government spends taxpayer dollars. Its mission is to help improve the performance and accountability of the Federal Government. Although the GAO usually audits FEMA programs, it has authority to audit any project.

C. Office of the Inspector General

The Department of Homeland Security's Office of Inspector General (OIG) conducts independent audits and investigations on FEMA programs, operations, activities, and functions; how Recipients and Subrecipients expend Federal funds; and oversight of non-Federal audits such as single audits. The OIG evaluates activities to identify, deter, and address fraud, waste, and abuse. The OIG has authority to audit any project, including Alternative Procedures Projects.

D. Recovery of Improper Payments

FEMA conducts audit assessments on drawdowns to recover payments identified as improper as required by the Improper Payments Elimination and Recovery Improvement Act (IPERIA). FEMA's *Public Assistance Recovery of Improper Payments Standard Operating Procedure* (SOP 9570.16)[367] provides additional information.

[365] 2 C.F.R. § 200.336.
[366] 2 C.F.R. § 200.501.
[367] www.fema.gov/media-library/assets/documents/92114.

CHAPTER 12: FINAL RECONCILIATION AND CLOSEOUT

Phase VI, *Final Reconciliation and Closeout* is the final stage of PA Program delivery process. This chapter provides PA policy and procedural requirements for reconciliation and closeout of Projects, Subrecipients, and the PA award.[368]

I. Project Reconciliation and Closeout

FEMA requires timely and complete project-level information from the Recipient as work is completed to facilitate efficient and effective closeout of the Recipient's prime award. This section defines requirements for project-level closeout. To initiate project-level closeout, the Subrecipient must inform the Recipient that its project is complete and the date the work was completed. To ensure a timely closeout process, the Subrecipient should notify the Recipient immediately as it completes each Large Project and when it has completed its last Small Project. Subrecipients should not wait for the Quarterly Progress Report to inform the Recipient as it must meet the 90-day closeout deadlines defined throughout this section.

A. Small Projects

Once FEMA obligates a Small Project, FEMA does not adjust the approved amount of an individual Small Project. This applies even when FEMA obligates the Project based on an estimate and actual costs for completing the eligible SOW differ from the estimated amount. To close Small Projects, the Recipient must submit a Small Project Completion Certification and certify that:

- The Subrecipient completed the approved SOWs for all of its Small Projects in accordance with the FEMA-State/Territory/Tribe Agreement; and
- It made all payments in accordance with the FEMA-State/Territory/Tribe agreement.[369]

FEMA only adjusts the approved amount on individual Small Projects if one of the following conditions applies:

- The Subrecipient did not complete the approved SOW;
- The Subrecipient requests additional funds related to an eligible change in SOW; or
- The Project contains inadvertent errors or omissions.

In these cases, FEMA only adjusts the specific cost items affected.

If the total actual cost of all of a Subrecipient's Small Projects combined exceeds the total amount obligated for all of the Small Projects, the Subrecipient may request additional funding. The Subrecipient must request the additional funding through the appeal process, described in Chapter 3:V.C. *Appeal Rights and Requirements*, within 60 days of work completion on its last Small Project.[370] FEMA refers to this as a Net Small Project Overrun (NSPO) appeal. The appeal

[368] The language in this document supersedes the language in the December 2013 *Public Assistance Program Management and Grant Closeout Standard Operating Procedure* (SOP) 9570.14.
[369] 44 C.F.R. § 206.205(a).
[370] 44 C.F.R. § 206.204(e)(2).

must include actual cost documentation for all Small Projects that FEMA originally funded based on estimate amounts.[371]

If the Subrecipient is not appealing for an NSPO, the Recipient must submit the certification to FEMA within 180 days from the latest Small Project work completion date or the latest approved deadline of the Subrecipient's Small Projects, whichever is sooner. The Recipient must submit certification of completion of all of its own Small Projects within 90 days of the latest Small Project work completion date or the approved deadline of its last Small Projects, whichever is sooner. [372]

Once FEMA receives the Recipient's certification and completes the necessary review, FEMA closes the respective Small Projects and notifies the Recipient in writing.

B. Large Projects

FEMA closes Large Projects individually as each is completed.[373] With exception of Capped Projects, the final eligible amount for a Large Project is the actual documented cost incurred to complete the eligible SOW.[374]

The Subrecipient must provide documentation to support the actual costs within 90 days of work completion.[375] The Recipient must submit a Large Project Expenditure Report and Completion Certification and must certify that:

- ☐ All incurred costs are associated with the approved SOW;
- ☐ The Subrecipient completed all work in compliance with the FEMA-State/Territory/Tribe Agreement; and
- ☐ It made all payments in accordance with 2 C.F.R. § 200.305.[376]

The Recipient must submit its certification of the Subrecipient's completion of each Large Project with the final claim for PA funding for the Project and supporting documentation to FEMA within 180 days of the work completion date or the Project deadline, whichever occurs first.[377] The Recipient must submit its certification for each of its own Large Projects within 90 days of the work completion date or the Project deadline, whichever occurs first. If work on a Large Project is complete prior to obligation, the Applicant must still submit actual cost documentation within the 90 days of work completion. However, the Recipient's certification and final payment of claim is due within 180-days from the date of obligation.

At a minimum, Large Project closeout packages must include:

- ☐ A cost breakdown identifying the individual elements that comprise the total actual costs claimed;
- ☐ Subrecipient's accounting of Project expenditures and dates of expenditures (such as a report from its accounting system);

[371] 44 C.F.R. § 206.204(e).
[372] 2 C.F.R. § 200.343.
[373] 44 C.F.R. § 206.205(b).
[374] 44 C.F.R. § 206.203(c)(1).
[375] 44 C.F.R. § 206.205(b)(1) and 2 C.F.R. § 200.343.
[376] 44 C.F.R. § 206.205(b)(1).
[377] 2 C.F.R. § 200.343. FEMA allows 180 days based on the combined allowance of 90 days for the Subrecipient and 90 days for the Recipient.

- ☐ All applicable documentation to support the actual costs as identified in Chapter 6. *Cost Eligibility*;
- ☐ Documentation sufficient for FEMA to validate the work performed was consistent with the approved SOW;
- ☐ Documentation to substantiate compliance with all terms and conditions of the award (e.g., EHP compliance documentation and insurance policies showing additional coverage obtained); and
- ☐ A summary explaining the documentation submitted.

Prior to closing Projects, FEMA:

- Verifies there are no outstanding appeals or arbitration cases;
- Reviews the invoices and other documentation related to the work performed to validate it was consistent with the approved SOW, including completion of any approved PA mitigation;
- Determines whether the Subrecipient completed the work within the approved deadline (FEMA limits reimbursement to costs incurred within the deadline);
- Ensures no duplication of funding exists (e.g., with insurance or costs in any other related Projects);
- Validates compliance with cost principles, including, but not limited to:
    - Equipment and property disposition;
    - Procurement and contracting; and
    - Reasonableness of costs (FEMA limits reimbursement to what it can determine to be reasonable).
- Validates compliance with all terms and conditions of the award, including, but not limited to:
    - Code and standard requirements;
    - EHP requirements; and
    - Insurance obtain and maintain requirements.
- FEMA reviews and verifies the accuracy of the actual costs and evaluates and reconciles any cost overruns or underruns. If the information is extensive, such as payroll records or trip tickets, FEMA selects and reviews a representative sample of the documents. If FEMA successfully validates the sample, it considers all of the records to be correct. However, if FEMA identifies errors it works with the Recipient to correct the errors and reviews a larger sample. If necessary, based on the number or significance of the errors, FEMA may return the final claim for correction and resubmittal. For Projects with funding changes, FEMA prepares a project amendment and obligates additional funds or reduces funding based on actual costs to complete the eligible SOW.[378]

If the Project included approved PA mitigation measures; FEMA does not re-evaluate the cost-effectiveness of the PA mitigation based on the final actual cost. If during the review, FEMA determines that the Subrecipient performed work that was not included in the approved SOW, the Subrecipient jeopardizes its funding. FEMA designates the project as an Improved Project,

[378] 44 C.F.R. § 206.205(b)(2).

reviews the additional SOW for EHP compliance, and either deobligates or caps funding at the original estimated amount, depending on the outcome of the review.[379]

For Capped Projects, the Subrecipient must provide documentation to support that it used the funds in accordance with the eligibility criteria described in Chapter 8:VIII.B. *Use of Capped Project Funds*.

If the Applicant did not comply with all Federal requirements (e.g., procurement and contracting, codes and standards, EHP, insurance, etc.), FEMA may deobligate either all or a portion of the funding.

Once FEMA completes its review and funding adjustments, FEMA closes the Project and notifies the Recipient in writing.

C. Alternative Procedures Permanent Work Projects

Work must be completed by the end of the latest Alternative Procedures Project period of performance and the Recipient must certify that all incurred costs are associated with the approved SOW and that the Subrecipient completed all work in accordance with FEMA regulations and policies. The Recipient must submit its certification to FEMA within 180 days of the Subrecipient completing its last Alternative Procedures Project or the latest Alternative Procedure Project deadline, whichever occurs first, in order for the Subrecipient to retain and use any excess funds.

The closeout certification must include a final report of Alternative Procedures Project costs and documentation to support the following:

- ☐ Summary of actual work completed;
- ☐ Mitigation measures achieved, if applicable;
- ☐ Compliance with EHP requirements;
- ☐ Compliance with the obtain and maintain insurance requirement;
- ☐ Summary of total actual costs to complete the Alternative Procedure Projects;
- ☐ Compliance with Federal procurement procedures; and
- ☐ Actual insurance proceeds received.

Subrecipients do not need to track costs to specific work items. Subrecipients only need to substantiate and certify that all claimed costs are related to the overall work deemed eligible for the Alternative Procedure Projects.

D. Subrecipients

The Recipient needs to request that FEMA close each Subrecipient once all of its respective Projects have been completed and closed for the disaster. The Recipient may either request this in the same submittal as the Subrecipient's last Project closeout request or may submit a separate request. The request should include a Project Completion Certification Report as it lists all of the Subrecipient's Projects.

[379] 44 C.F.R. § 206.203(d)(1).

If all of the Subrecipient's Projects are closed and there are no outstanding audits, FEMA closes the Subrecipient and notifies the Recipient in writing.

II. Stafford Act Section 705

Stafford Act Section 705 imposes a 3-year limit on FEMA's authority to recover payments made to SLTT government Recipients and Subrecipients unless there is evidence of fraud. Section 705 does not apply to PNPs. To ensure consistent application of the provisions contained in Section 705, FEMA issued Recovery Policy (FP 205-081-2), *Stafford Act Section 705, Disaster Grant Closeout Procedures*, which describes the limitations and requirements in detail.[380]

III. Public Assistance Award Closeout

The Recipient must submit its final FFR (SF-425) with a written request to close the PA award. FEMA and the Recipient certify that all work was completed, all eligible costs have been reimbursed, and financially reconciled. The PA program is programmatically closed when FEMA ensures that all PA Projects awarded for the incident met statutory and regulatory requirements. For FEMA to close the PA award, the following conditions should be met:

- FEMA has issued final determinations on all appeals;
- FEMA has obligated all eligible PA funding;
- The Recipient and Subrecipients have completed all PA Projects and have met the statutory and regulatory requirements governing the program, including compliance with EHP requirements and insurance purchase requirements;
- The Recipient has passed through all obligated funds appropriately and submitted its final expenditure report to FEMA;
- FEMA has adjusted the funding level for the program, as appropriate; and
- Both FEMA and the Recipient have completed all administrative actions related to the PA Program.

The Recipient must liquidate all obligations within 90 days of the end of the prime award period of performance.

IV. Documentation Retention Requirements

Subrecipients must maintain all source documentation for each Project[381] for 3 years after the date of transmission of the final expenditure report for project completion as certified by the Recipient.[382] The Recipient must keep all financial and program documentation[383] for 3 years after the date it submits the final SF-425. There are several exceptions to this timeframe that may require longer retention periods, including exceptions relating to real property and equipment disposition, audits, and litigation.[384] Additionally, SLTT government laws may require longer retention periods.

[380] www.fema.gov/media-library/assets/documents/136089.
[381] 2 C.F.R. § 200.302(b)(3).
[382] Stafford Act § 705(b)(1), 42 U.S.C. § 5205. See FEMA Policy 205-081-2, *Stafford Act Section 705, Disaster Grant Closeout Procedures* for additional details.
[383] 2 C.F.R. § 200.302(b)(3).
[384] 2 C.F.R. § 200.333.

ABBREVIATIONS AND ACRONYMS

ACSR	Aluminum Conductor Steel Reinforced
ADA	Americans with Disabilities Act
BCA	Benefit-Cost Analysis
BFE	Base Flood Elevation
BIA	Bureau of Indian Affairs
CAA	Clean Air Act
CATEX	Categorical Exclusion
CBRA	Coastal Barrier Resources Act
CBRS	Coastal Barrier Resource System
CDC	Centers for Disease Control and Prevention
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
C.F.R.	Code of Federal Regulations
CRC	Consolidated Resource Center
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DFA	Direct Federal Assistance
DMP	Debris Management Plan
EA	Environmental Assessment
EHP	Environmental and Historic Preservation
EIS	Environmental Impact Statement
EMAC	Emergency Management Assistance Compact
EO	Executive Order
EOC	Emergency Operation Center
EPA	U.S. Environmental Protection Agency
ER	Emergency Relief (Program)
ERFO	Emergency Relief for Federally Owned Roads (Program)
ESA	Endangered Species Act
EWP	Emergency Watershed Protection Program
FCO	Federal Coordinating Officer
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Map

FMAG	Fire Management Assistance Grant
FP	FEMA Recovery Policy
FSR	Financial Status Report
GPS	Global Positioning System
HEPA	High-Efficiency Particulate Air
HHS	U.S. Department of Health and Human Services
HHW	household hazardous waste
HMA	Hazard Mitigation Assistance
HMGP	Hazard Mitigation Grant Program
HMP	Hazard Mitigation Proposal
HUD	U.S. Department of Housing and Urban Development
HVAC	heating, ventilation, and air conditioning
IBD	Infrastructure Branch Director
IA	Individual Assistance
IHP	Individuals and Households Program
JFO	Joint Field Office
NCEI	National Centers for Environmental Information
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NRCS	Natural Resources Conservation Service
NWS	National Weather Service
PA	Public Assistance
PAGS	Public Assistance Group Supervisor
PDA	Preliminary Damage Assessment
PNP	Private Nonprofit
PDMG	Program Delivery Manager
PDTFL	Program Delivery Task Force Leader
RA	Regional Administrator
RCRA	Resource Conservation and Recovery Act
RIP	Rehabilitation and Inspection Program
ROW	Right-of-Way

RPA	Request for Public Assistance
RUS	Rural Utilities Service
SBA	U.S. Small Business Administration
SFHA	Special Flood Hazard Area
SHPO	State Historic Preservation Officer
SI	Site Inspector
SOW	Scope of Work
STATEX	Statutory Exclusion
T&M	time and materials
TFL	Task Force Leader
THPO	Tribal Historic Preservation Officer
USACE	U.S. Army Corps of Engineers
U.S.C.	United States Code
USCG	U.S. Coast Guard
USDA	U.S. Department of Agriculture
USFWS	U.S. Fish and Wildlife Service

REFERENCES AND RESOURCES

Public Assistance Program References

- www.fema.gov/public-assistance-local-state-tribal-and-non-profit
- Archived Policy Documents: www.fema.gov/media-library/assets/documents/128488
- Archived Publications: www.fema.gov/media-library/assets/documents/25653
- *Cost Estimating Format (CEF) for Large Projects Standard Operating Procedure* (FEMA SOP 9570.8): www.fema.gov/media-library/assets/documents/86377
- *Damage Assessment Operations Manual*: www.fema.gov/media-library/assets/documents/109040
- *Debris Estimating Field Guide* (FEMA 329): www.fema.gov/pdf/government/grant/pa/fema_329_debris_estimating.pdf
- *Direct Reimbursement for Host-State Evacuation and Sheltering Costs* (FEMA SOP 9570.1): www.fema.gov/media-library/assets/documents/28328
- *Environmental and Historic Preservation (EHP) Fact Sheet for Debris Removal Activities*: www.fema.gov/media-library/assets/documents/90743
- Equipment Rates: www.fema.gov/schedule-equipment-rates
- *Infectious Disease Event Fact Sheet* (FP 104-009-001): www.fema.gov/media-library/assets/documents/99710
- Mission Assignments for ESF #10 (FEMA 9523.8): www.fema.gov
- FEMA Recovery Interim Policy, *Consensus-Based Codes, Specifications and Standards for Public Assistance* (FP 104-009-11): https://www.fema.gov/media-library/assets/documents/184615
- FEMA Recovery Policy, *Public Assistance Management Costs (Interim)* (FP 104-11-2): https://www.fema.gov/media-library/assets/documents/174133
- *Field Manual* (Procurement Information for FEMA Public Assistance Award Recipients and Subrecipients): www.fema.gov/media-library/assets/documents/96773
- *Public Assistance Building Back Better Fact Sheet*: www.fema.gov/media-library/assets/documents/90743
- *Public Assistance Fact Sheet*: www.fema.gov/media-library/assets/documents/90743
- *Public Assistance Management Costs Interim Policy Fact Sheet*: www.fema.gov/media-library/assets/documents/90743
- *Public Assistance Management Costs Standard Operating Procedures*: www.fema.gov/media-library/assets/documents/86377
- *Private Nonprofit Houses of Worship Fact Sheet*: www.fema.gov/media-library/assets/documents/90743
- *Public Assistance Debris Removal Tips Fact Sheet*: www.fema.gov/media-library/assets/documents/90743
- *Public Assistance Policy on Insurance* (FP 206-086-1): www.fema.gov/media-library/assets/documents/136089

- *Public Assistance Policy on Stafford Act Section 705, Disaster Grant Closeout Procedures* (FP 205-081-2): www.fema.gov/media-library/assets/documents/136089
- *Public Assistance Recovery of Improper Payments Standard Operating Procedures* (FEMA SOP 9570.16): www.fema.gov/media-library/assets/documents/92114
- *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352): www.fema.gov/media-library/assets/documents/747
- *Safe Rooms for Tornadoes and Hurricanes, Guidance for Community and Residential Safe Rooms* (FEMA P-361): www.fema.gov/media-library/assets/documents/3140
- Small Business Administration Loans: www.sba.gov/content/sba-loans
- *State-Led Public Assistance Guide*: www.fema.gov/media-library/assets/documents/136089
- *Strategic Funds Management – Implementation Procedures for the PA Program* (FEMA SOP 9570.24): www.fema.gov/media-library/assets/documents/30301
- *Validation of Small Projects* (FEMA SOP 9570.6): www.fema.gov/media-library/assets/documents/28349

Forms

- Application for Federal Assistance (SF-424) and Assurances (SF 424-D): www.grants.gov/forms/sf-424-family.html
- Federal Financial Status Report (FFR) (SF-425): www.fema.gov/media-library-data/20130726-1856-25045-9653/sf_financial_status_report.pdf
- Request for Public Assistance: www.fema.gov/media-library/assets/documents/10236

Statutes

- *The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended* (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq.
- www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended
- Federally Recognized Tribe List Act of 1994: http://uscode.house.gov/statutes/pl/103/454.pdf

Code of Federal Regulations

- Title 2 of the Code of Federal Regulations (C.F.R.), Grants and Agreements: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&tpl=/ecfrbrowse/Title02/2tab_02.tpl
- 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt2.1.200&rgn=div5
- 7 C.F.R. § 1730.25, Corrective action (Rural Utilities Service [RUS] borrowers only): www.ecfr.gov/cgi-bin/text-

idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt7.11.1730&rgn=div5#se7.11.1730_125

- 15 C.F.R. Part 774, The Commerce Control List: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt15.2.774&rgn=div5
- 22 C.F.R. Part 121, The United States Munitions List: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt22.1.121&rgn=div5
- 40 C.F.R. Part 261, Identification and Listing of Hazardous Waste: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt40.26.261&rgn=div5
- 40 C.F.R. Parts 1500–1508, NEPA Regulations: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&tpl=/ecfrbrowse/Title40/40cfrv33_02.tpl#1500
- 44 C.F.R., Emergency Management and Assistance: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&tpl=/ecfrbrowse/Title44/44tab_02.tpl
- 44 C.F.R. Part 9, Floodplain Management and Protection of Wetlands: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.9&rgn=div5
- 44 C.F.R. Part 201, Mitigation Planning: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.201&rgn=div5
- 44 C.F.R. Part 204, Fire Management Assistance Grant (FMAG) Program: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.204&rgn=div5
- 44 C.F.R. Part 206, Federal Disaster Assistance: www.ecfr.gov/cgi-bin/text-idx?SID=e9db96b738b11340c696c4ee451d3865&mc=true&node=pt44.1.206&rgn=div5
- 48 C.F.R. Subpart 2.1, Federal Acquisition Regulation: www.ecfr.gov/cgi-bin/text-idx?SID=6bb67f6254dbbfb229adddfa247ca4eb&mc=true&node=pt48.1.2&rgn=div5#sp48.1.2.2_11

Environmental Protection Laws and Executive Orders

- Clean Air Act (CAA): www.epa.gov/air/caa/
- Clean Water Act (CWA): www.epa.gov/laws-regulations/summary-clean-water-act
- Coastal Barrier Resources Act (CBRA): www.fws.gov/ecological-services/habitat-conservation/cbra/Act/index.html
- John H. Chafee Coastal Barrier Resources System (CBRS): www.fws.gov/ecological-services/habitat-conservation/coastal.html
- Coastal Zone Management Act (CZMA): coast.noaa.gov/czm/act/
- Comprehensive Environmental Response Compensation and Liability Act (CERCLA): www.epa.gov/superfund/policy/cercla.htm
- Endangered Species Act (ESA): www.fws.gov/endangered/laws-policies/

- Farmland Protection Policy Act (FPPA): www.nrcs.usda.gov/wps/portal/nrcs/detail/?cid=nrcs143_008275
- Fish and Wildlife Coordination Act: www.fws.gov/laws/lawsdigest/fwcoord.html
- Magnuson-Stevens Fishery Conservation and Management Act: www.fisheries.noaa.gov/resource/document/magnuson-stevens-fishery-conservation-and-management-act
- Migratory Bird Treaty Act: www.fws.gov/laws/lawsdigest/migtrea.html
- National Environmental Policy Act (NEPA): www.epa.gov/nepa
- Resource Conservation and Recovery Act (RCRA): www.epa.gov/rcra
- Wild and Scenic Rivers Act: www.rivers.gov/wsr-act.php
- Executive Order (EO) 11988, Floodplain Management: www.fema.gov/executive-order-11988-floodplain-management
- EO 11990, Protection of Wetlands: www.fema.gov/executive-order-11990-protection-wetlands-1977
- EO 12898, Environmental Justice: www.fema.gov/executive-order-12898-environmental-justice-low-income-minority-populations-1994

Historic Preservation Laws and Tools

- Advisory Council on Historic Preservation: www.achp.gov
- American Institute for Conservation Code of Ethics and Guidelines for Practice: www.culturalheritage.org/about-conservation/code-of-ethics
- National Historic Preservation Act (NHPA): www.nps.gov/history/local-law/nhpa1966.htm
- National Register of Historic Places: www.nps.gov/subjects/nationalregister/index.htm

Other Laws and EOs

- Americans with Disabilities Act (ADA): www.ada.gov
- EO 13717, Establishing a Federal Earthquake Risk Management Standard: www.gpo.gov/fdsys/pkg/FR-2016-02-05/pdf/2016-02475.pdf

Federal Emergency Management Agency References

- FEMA: www.fema.gov
- FEMA Stafford Act Declaration Process Fact Sheet: www.fema.gov/declaration-process-fact-sheet
- FMAG Program: www.fema.gov/fire-management-assistance-grant-program
    - FMAG Program Guide (FEMA P-954): www.fema.gov/media-library/assets/documents/92379
- Federal Insurance and Mitigation Administration (FIMA): www.fema.gov/what-mitigation/federal-insurance-mitigation-administration

  - FIMA Policy (FP 306-112-1): www.fema.gov/media-library-data/52b14d2dfb254480e7cac82fa2acda58/FP_303_112_1_508.pdf
  - National Flood Insurance Program (NFIP): www.fema.gov/national-flood-insurance-program
  - Hazard Mitigation Assistance (HMA) Programs: www.fema.gov/hazard-mitigation-assistance
  - HMA Guidance: www.fema.gov/media-library/assets/documents/103279
  - Hazard Mitigation Grant Program (HMGP): www.fema.gov/hazard-mitigation-grant-program
  - State Hazard Mitigation Officer: www.fema.gov/state-hazard-mitigation-officers
- Individual Assistance (IA) Programs: www.fema.gov/individual-assistance-program-tools
  - Individuals and Households Program (IHP): www.fema.gov/media-library/assets/documents/24945
- National Disaster Recovery Framework (NDRF): www.fema.gov/media-library/resources-documents/collections/526
- National Response Framework (NRF): www.fema.gov/media-library/resources-documents/collections/526

Other Federal Agencies

- Bureau of Indian Affairs (BIA): www.indianaffairs.gov
- Federal Highway Administration (FHWA): www.fhwa.dot.gov
  - FHWA Emergency Relief Program (ERP): www.fhwa.dot.gov/programadmin/erelief.cfm
- National Oceanic and Atmospheric Administration (NOAA): www.noaa.gov
  - National Marine Fisheries Service (NMFS): www.nmfs.noaa.gov
  - National Centers for Environmental Information (NCEI), formerly known as the National Climatic Data Center (NCDC): www.ncei.noaa.gov
  - NWS Cooperative Network Stations: www.nws.noaa.gov/om/coop/
- Natural Resources Conservation Service (NRCS): www.nrcs.usda.gov
  - NRCS Emergency Watershed Protection Program (EWP): www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/ewpp
- National Weather Service (NWS): www.weather.gov
- U.S. Army Corps of Engineers (USACE): www.usace.army.mil
  - USACE Rehabilitation and Inspection Program (RIP): www.usace.army.mil/Missions/CivilWorks/LeveeSafetyProgram/LeveeInspections.aspx
- U.S. Coast Guard (USCG): www.uscg.mil
- U.S. Department of Agriculture (USDA): www.usda.gov
  - Farm Service Agency: www.fsa.usda.gov
- U.S. Department of Health and Human Services (HHS): www.hhs.gov

  - Centers for Disease Control and Prevention (CDC): www.cdc.gov
- U.S. Department of Homeland Security (DHS): www.dhs.gov
  - DHS Office of Inspector General (OIG): www.oig.dhs.gov
- U.S. Department of Housing and Urban Development (HUD): www.hud.gov
  - Community Development Block Grant Program: www.hud.gov/program_offices/comm_planning/communitydevelopment/programs
- U.S. Department of Labor: www.dol.gov
- U.S. Environmental Protection Agency (EPA): www.epa.gov
- U.S. Fish and Wildlife Service (USFWS): www.fws.gov
- U.S. Government Accountability Office (GAO): www.gao.gov

TERMS AND DEFINITIONS

Acquisition cost

The net invoice price of equipment including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the Recipient's regular accounting practices.

Animal

Any living or dead member of the animal kingdom, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate or any part thereof.

Applicant

A non-Federal entity submitting an application for assistance under the Recipient's Federal award.

Assistance Animal

An animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provide emotional support that alleviates identified symptoms or effects of a person's disability. Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

Award (Federal)

The financial assistance that a non-Federal entity receives either directly from a Federal awarding agency or indirectly from a pass-through entity; or the cost-reimbursement contract under the Federal Acquisition Regulation that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.

Backfill Employee

A replacement employee who performs the regular duties of other personnel.

Coastal zone

The coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of coastal States, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

Cost-to-charge ratio

A ratio established by Medicare to estimate a medical service provider's actual costs in relation to its charges.

Critical action

An action for which even a slight chance of flooding is too great. The minimum floodplain of concern for critical actions is the 500-year floodplain (also referred to as the critical action floodplain).

Current fair market value

The value of equipment and supplies determined by selling them in a competitive market or by researching advertised prices for similar items on the used market.

Duplication of Benefits

Funding received from two sources for the same item of work.

Educational institution

Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

Emergency

Any occasion or instance for which the President determines Federal assistance is needed to supplement SLTT efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Emergency Protective Measure

An action taken by a community before, during, and after an incident to save lives, protect public health and safety, and prevent damage to improved public and private property.

Emergency Work

Work that must be done immediately to save lives, protect improved property, protect public health and safety, or avert or lessen the threat of a major disaster.

Equipment

Tangible personal property, including information technology systems, having a useful life of more than 1 year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000.

Facility

Any publicly or privately-owned building, works, system or equipment—built or manufactured—or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

Federal agency

Any department, independent establishment, government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but not including the American National Red Cross.

Federal share

The portion of the total project costs that are paid by Federal funds.

Final expenditure report

The report the Recipient submits to FEMA for all of a Subrecipient's Projects, certifying that the grant terms and conditions have been met and project costs are reconciled.

Flood control work

A structure such as a levee, flood wall, flood control channel, or water control structure that was designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water level.

Flood fighting

An activity or measure (e.g., sandbagging, buttressing) intended to prevent or stop flooding, at levels above flood stage, or to prevent structural failure.

Force account

An Applicant's own labor forces and equipment.

Fringe benefits

A percentage of the actual wages that pays for employee benefits.

Immediate threat

The threat of additional damage or destruction from an event that can reasonably be expected to occur within 5 years.

Improved property

A structure, facility, or item of equipment that was built, constructed, or manufactured. Land used for agricultural purposes is not improved property.

Incident period

The time span during which the disaster-causing incident occurs.

Indian Tribal Government

Any federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Tribe List Act of 1994, Title 25 of the U.S. Code (U.S.C.) 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Indirect cost

A cost incurred for a common or joint purpose benefiting more than one cost objective that is not readily assignable to the cost objectives specifically benefited.

Inland zone

The environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors on inland rivers. Precise boundaries are identified in Federal regional contingency plans.

Large Project

A project for which the final obligated (Federal and non-Federal) amount is equal to or *greater* than the annually adjusted cost threshold for small project grants.

Local government

A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments(regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; an Indian Tribe or authorized tribal organization, or Alaska Native village or organization that does not meet the definition of Indian Tribal Government; or a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

Major disaster

Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, for which the President determines causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended to supplement the efforts and available resources of SLTT governments and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Management cost

Any indirect cost, any direct administrative cost, and any other administrative expense associated with a specific project under a major disaster or emergency.

Museum

A facility that preserves and exhibits a documented collection of artistic, historic, scientific, or other objects.

Non-Federal entity

An institution of higher education, nonprofit organization, local government, Indian Tribe, or State that carries out a Federal award as a Recipient or Subrecipient.

Pass-through entity

A non-Federal entity that provides a subaward to a Subrecipient to carry out part of a Federal program.

Period of performance

The time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award.

Permanent Work

Restorative work that must be performed through repairs or replacement to restore an eligible facility on the basis of its pre-disaster design and current applicable codes and standards.

Personal property

Property other than real property. It may be tangible, having physical existence, or intangible.

Pet (household)

A Domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in a commercial carrier, and can be housed in a temporary facility. Examples are dogs, cats, birds, rabbits, rodents, and turtles. Household pets do not include reptiles (except turtles), amphibians, fish, insects, arachnids, farm animals (including horses), or animals kept for racing purposes.

Pre-disaster design

The size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

Pre-disaster function

The function the facility was performing immediately prior to the disaster.

Private nonprofit organization

Any nongovernmental agency or entity that currently has an effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code, or satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

Private roads

Roads that are not owned or operated by or otherwise the legal responsibility of a Federal or SLTT entity (including orphan roads, roads in gated communities, homeowners' association roads, etc.).

PNP custodial care facility

A building, structure, or system, including those for essential administration and support, that is used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

PNP educational facility

Classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes.

PNP emergency facility

A building, structure, equipment, or system used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities, even if not contiguous.

PNP medical facility

A hospital, outpatient facility, rehabilitation facility, or facility for long-term care as such terms are defined in Section 645 of the Public Health Service Act (42 U.S.C. 291o) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

Project

A logical grouping of work required as a result of the declared major disaster or emergency.

Providing entity

The entity providing mutual aid assistance to a requesting entity pursuant to a local or statewide mutual aid agreement.

Public entity

An organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

Public facility

Any of the following facilities owned by a SLTT government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

Real property

Land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient

A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.

Reasonable cost

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In other words, a reasonable cost is a cost that is both fair and equitable for the type of work being performed.

Rehabilitation facility

A facility that primarily provides diagnosis and treatment for rehabilitation of injuries, disabilities, or illness. (Consistent with the definition of “comprehensive outpatient rehabilitation facility” in 42 U.S.C. § 1395x(cc)(2)).

Request for Public Assistance

The form a public entity or PNP organization uses to apply for assistance under the Public Assistance Program.

Requesting Entity

An entity that requests mutual aid assistance from a Providing Entity for work resulting from a declared fire, emergency, or major disaster within its legal jurisdiction.

Service animal

A dog that is individually trained to do work or perform tasks for people with disabilities or access and functional needs.

Simplified acquisition threshold

The dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is $150,000, but this threshold is periodically adjusted for inflation.

Small Project

A project for which the final obligated (Federal and non-Federal) amount is less than the annually adjusted cost threshold for small project grants.

Special Flood Hazard Area

The land area subject to inundation during a flood having a 1 percent chance of being equaled or exceeded in a given year (also referred to as the base flood or 100-year flood). Special Flood Hazard Areas are shown on FIRMs published by FEMA.

State

Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Subaward

An award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

Subrecipient

A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program. It does not include an individual that is a beneficiary of such program. A Subrecipient may also be a Recipient of other Federal awards directly from a Federal awarding agency.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Supply

Any tangible personal property other than that meeting the definition of equipment.

Trust land

Land, the title to which is held by the United States in trust for an Indian Tribe or individual, or which is held by an Indian Tribe or individual subject to a restriction by the United States against alienation. “Trust or restricted interest in land” or “trust or restricted interest in a parcel of land” means an interest in trust land. Collectively referred to as “trust lands.”

Wetland

An area that is saturated by water with a frequency sufficient to support or, under normal hydrologic conditions would support, a prevalence of vegetation or aquatic life typically adapted to saturated or seasonally saturated soil conditions (e.g., swamp, fresh and saltwater marsh, bog, fen).

Zoo

Any facility maintained under the care of a Doctor of Veterinary Medicine, in which live animal(s) are kept for public exhibition or education. Aquariums and wildlife or zoological parks may meet this definition.

APPENDIX A: ENVIRONMENTAL AND HISTORIC PRESERVATION COMPLIANCE

The following statutes and Executive Orders (EOs) are commonly encountered Federal requirements that were established to protect the environment and preserve the Nation's historic and archaeological resources. FEMA reviews each Public Assistance (PA) project to ensure the work complies with applicable Federal environmental and historic preservation (EHP) laws, their implementing regulations, and applicable EOs. Compliance with all Federal and SLTT laws is a requirement of every FEMA award. SLTT laws, such as hazardous material management laws, vary by location and are not included in this appendix.

FEMA prepares a Greensheet at the beginning of each emergency or disaster declaration with specific information relevant to each State and area. The Greensheet briefly discusses the relevant laws and project types that might trigger application of those laws and informs the Applicant that failure to comply with Federal and SLTT laws may jeopardize funding.

National Environmental Policy Act

Section 102 of the National Environmental Policy Act (NEPA) requires Federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.[385] The White House Council on Environmental Quality publishes its NEPA regulations in Title 40 of the Code of Federal Regulations (C.F.R.) Parts 1500–1508. The U.S. Department of Homeland Security publishes policies and procedures for implementing NEPA and provide specific processes that FEMA must follow before funding a project. The NEPA process ensures consideration of environmental consequences of the project before decisions are made and involves the public.

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires FEMA to consider the effects an undertaking will have on historic properties and provide the Advisory Council on Historic Preservation the opportunity to comment on the effects of the undertaking.[386] Historic properties include buildings or groups of buildings (districts), structures, objects, landscapes, archaeological sites, and traditional cultural properties included in, or eligible for inclusion in, the National Register of Historic Places.[387]

Endangered Species Act

The Endangered Species Act (ESA) requires Federal agencies to use their authorities to conserve federally listed threatened and endangered species (listed species) and critical habitats. FEMA must also consult with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), also known as NOAA Fisheries, to ensure that proposed projects will not jeopardize the continued

[385] 42 U.S.C. § 4332.
[386] 16 U.S.C. § 470f.
[387] www.nps.gov/subjects/nationalregister/index.htm.

existence of any listed species or result in the destruction or adverse modification of critical habitat for listed species.[388]

Clean Water Act

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants in the waters of the United States (e.g., rivers and streams, lakes and ponds, coastlines, wetlands, estuaries). The CWA makes it unlawful to discharge any pollutant from a specific source into navigable waters without the appropriate CWA permits from the U.S. Army Corps of Engineers (USACE) or State regulatory agency.[389] In addition, the CWA requires authorization for dredging or filling in waters (including disposal of dredged material).

Rivers and Harbors Act

The Rivers and Harbors Act requires that authorization be obtained from USACE to construct any structure in or over any navigable water, including authorization for projects involving constructing or modifying bridges and causeways over navigable waters or constructing any dam or dike in a navigable water. Typically, requests for this type of authorization are handled together with requests for authorization of projects under Section 404 of the CWA.

Safe Drinking Water Act

The purpose of the Safe Drinking Water Act is to protect public health by ensuring the quality of drinking water. The law authorizes the U.S. Environmental Protection Agency (EPA) to, among other things, set standards for the levels of individual contaminants allowed in drinking water and designate as aquifers that are the sole or principal source of drinking water for an area as sole source aquifers. For any financial assistance project that has the potential to contaminate an aquifer and that is located in the identified review area for a sole source aquifer, FEMA must consult with the EPA before funding the project.

Clean Air Act

The Clean Air Act (CAA) protects the Nation's air through the reduction of smog and atmospheric pollution. Air quality compliance often requires certain measures be implemented, such as dust abatement, vehicle emissions control, fuel storage, and distribution procedures. There may be additional requirements in nonattainment areas (defined as those areas that do not meet national standards for air quality and, therefore, require more rigorous compliance measures).[390]

Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA)[391] established the John H. Chafee Coastal Barrier Resources System (CBRS), which consists of relatively undeveloped coastal barriers along the Atlantic, Gulf, Great Lakes, and Caribbean coasts. CBRA minimizes adverse impacts to these areas by restricting Federal assistance that encourages development within the CBRS. USFWS

[388] 16 U.S.C. § 1536, Endangered Species Act Section 7.
[389] 33 U.S.C. § 1251 et seq.
[390] 42 U.S.C. § 7401 et seq.
[391] 16 U.S.C. § 3501 et seq.

publishes maps designating these areas.[392] FEMA must consult with USFWS prior to providing PA funding for work within the CBRS.[393]

Migratory Bird Treaty Act

The Migratory Bird Treaty Act makes it unlawful to pursue, hunt, take, capture, kill, or sell migratory birds listed in the statute without a waiver from USFWS.[394] FEMA consults with USFWS regarding projects likely to trigger compliance with this Act.

Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act prohibits any person from pursuing, capturing, killing, wounding, disturbing, or otherwise taking bald eagles or golden eagles, including their parts (e.g., feathers), nests, or eggs, unless authorized by a permit from the USFWS. The prohibition on disturbance applies to nests and previously used nest sites when eagles are not present if, were an eagle to return, such alterations would lead to injury, death or nest abandonment.

Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act is the primary law for managing and maintaining sustainable fisheries in waters of the United States. The Magnuson-Stevens Fishery Conservation and Management Act protects essential fish habitat, which includes the waters and substrate necessary to maintain healthy fisheries. FEMA must consult with NMFS when any proposed PA project could have an adverse effect on essential fish habitat (defined as any impact that reduces quality or quantity of essential fish habitat).[395]

Marine Mammal Protection Act

The Marine Mammal Protection Act prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters or by U.S. citizens on the high seas. The law prohibits attempts to hunt, capture, kill, or harass any marine mammals. The law authorizes NMFS or USFWS (depending on the species in question) to issue incidental take permits and incidental harassment authorizations.

National Marine Sanctuaries Act (NMSA)

The National Marine Sanctuaries Act, which is part of the Marine Protection, Research and Sanctuaries Act, authorizes the Secretary of Commerce to designate and manage areas of the marine environment as National Marine Sanctuaries (NMS), which NOAA administers. Activities within each NMS are governed by regulations. A sanctuary resource is defined as any living or nonliving resource of a NMS that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary. The National Marine Sanctuaries Act prohibits destroying, injuring, or causing the

[392] 16 U.S.C. §§ 3501 and 3503. The U.S. Fish and Wildlife Service publishes Coastal Barrier Resource System maps at: www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/index.html.
[393] 16 U.S.C. § 3505.
[394] 16 U.S.C. §§ 703–712.
[395] 16 U.S.C. §§ 1801–1884.

loss of any sanctuary resource. A permit is required to conduct any activity within a sanctuary that is otherwise prohibited.

Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) provides for the management of the Nation's coastal resources. The CZMA establishes a voluntary partnership between the Federal Government and coastal and great lakes States. It requires participating States to develop State coastal zone management plans. PA projects located in, or near, established coastal zone management areas must be consistent with the enforceable policies of the State's federally approved coastal zone management program.[396] Before approving a project in a coastal zone management area, FEMA consults with the State agency overseeing the implementation of the CZMA plan to ensure the project is consistent with the program's provisions.

Farmland Protection Policy Act

The Farmland Protection Policy Act is intended to minimize the extent to which Federal programs contribute to the conversion of prime or unique farmland, or land of statewide or local importance, to nonagricultural uses and to ensure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, local, and private programs and policies to protect farmland. The Farmland Protection Policy Act and U.S. Department of Agriculture (USDA) implementing procedures require FEMA to evaluate whether projects it funds irreversibly convert such farmland to nonagricultural uses and to consider alternative actions that could avoid adverse effects. For projects that have the potential to irreversibly convert such farmland, FEMA must consult with the USDA Natural Resources Conservation Service (NRCS) to identify potential impacts to that farmland.[397]

Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act protects the free-flowing condition of rivers that are part of the National Wild and Scenic Rivers System (System) or are under study for inclusion in the System because of their scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values (the rivers under study are listed on the Nationwide Rivers Inventory or have been formally identified as Study Rivers). If a proposed project is located on a river covered by the Wild and Scenic Rivers Act (including a designated river, a Study River, or a river on the Nationwide Rivers Inventory), FEMA must review it for compliance with the Wild and Scenic Rivers Act and consult with the managing agency for the affected designated river.[398]

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) established a framework for Federal, State, and local cooperation for controlling the management of hazardous and non-hazardous solid waste. EPA's role is to establish minimum regulatory standards, usually implemented by the States, which can establish their own requirements for solid waste management. RCRA

[396] 16 U.S.C. § 1451 et seq.
[397] 7 U.S.C. § 4201 et seq.
[398] 16 U.S.C. § 1271 et seq.

requires the safe disposal of waste materials, promotes the recycling of waste materials, and encourages cooperation with local agencies.[399]

Comprehensive Environmental Response, Compensation and Liability Act

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund, authorizes the Federal Government to respond to releases or threatened releases of hazardous substances into the environment through short-term removals and long-term remedial response actions. Superfund also triggered the development of the National Priorities List, a list of national priorities among the sites with known or threatened releases of hazardous contaminants. The 1986 amendments to CERCLA included the Emergency Planning and Community Right-to-Know Act (EPCRA) which, among other things, creates mechanisms to help local communities plan for chemical emergencies.

Executive Order 11988, Floodplain Management

EO 11988, Floodplain Management, requires Federal agencies to minimize or avoid, to the extent possible, the long- and short-term adverse impacts associated with occupancy and modifications of floodplain and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. It requires Federal agencies to use a systematic decision-making process to evaluate the potential effects of projects located in, or affecting, floodplains; document each step of the process; and involve the public in the decision-making process. This process is designed to:

- Reduce flood loss risks;
- Minimize the impacts of floods on human safety, health, and welfare; and
- Restore and preserve the natural and beneficial functions of floodplains.

FEMA publishes its implementing regulations for EO 11988 in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.[400]

Executive Order 11990, Protection of Wetlands

EO 11990, Protection of Wetlands, requires Federal agencies to avoid to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. To meet these objectives, EO 11990 requires Federal agencies to use a systematic decision-making process to evaluate the potential effects of projects in, or affecting, wetlands; document each step of the process; and involve the public in the decision-making process.

FEMA publishes its implementing regulations for EO 11990, Protection of Wetlands in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.

[399] 42 U.S.C. § 6901 et seq.
[400] 44 C.F.R. § 9.6, Decision-making process.

Executive Order 12898, Environmental Justice

EO 12898, Environmental Justice, requires Federal agencies to identify and address any disproportionately high and adverse human health or environmental effects on minority and low-income populations as a result of their actions.

Executive Order 13112, Invasive Species

EO 13112, Invasive Species, requires agencies to use their programs and authorities to help prevent the introduction, establishment, and spread of invasive species; respond to invasive species outbreaks; restore native species in areas invaded by invasive species; promote public education related to invasive species control; and avoid authorizing, funding, or carrying out activities that promote the introduction, establishment, or spread of invasive species.

APPENDIX B: PRIVATE NONPROFIT FACILITY ELIGIBILITY EXAMPLES

Below are examples of private nonprofit (PNP) facility eligibility determinations.

Facility owned by PNP – PNP Leases Portion of Space to For-Profit Service

Parkland Hospital is an eligible PNP that owns a medical office building and leases a portion of it to doctors and laboratories that are providing for-profit services. The for-profit leases are for 70 percent of the floor space, excluding the common area floor space, as defined in this policy.

Analysis:

The building is ineligible because the eligible services were offered in less than 50 percent of the building space.

PNP Recreational Center Providing Eligible Services

The PNP Springtown Recreation Center claims that it provides eligible essential social services in addition to its recreation activities and should be eligible for assistance. The organization claims that its services now include day care for elderly adults, senior citizen center programs, programs for families of domestic abuse, and shelter workshops. These programs are provided by the recreation center staff and offered 5 days a week. Recreation activities are limited to evenings and weekends. The entire center is used for the eligible services.

Analysis

The organization would not appear to be eligible based upon its name and presumed mission. A detailed examination is necessary to determine the eligibility of the organization and its facility based upon the eligible services provided. In cases where space is not dedicated to any specific activity, the amount of time dedicated to eligible purposes in such spaces determines eligibility and the level of assistance. Therefore, even though the entire facility is used for eligible purposes, FEMA prorates PA funding based on the proportion of the total time it is used for eligible services.

Support Facility Owned by PNP

A parking garage is owned by an eligible PNP hospital to support its nearby hospital facility. The ground floor is leased to retail businesses and totals 15 percent of the total space of the garage.

Analysis

Title 44 of the Code of Federal Regulations (C.F.R.) § 206.221(e), *Private nonprofit facility*, authorizes assistance for administrative and support facilities essential to the operation of medical facilities and emergency facilities, which in this example includes the parking garage. Because the hospital uses more than 50 percent of the parking garage, the facility is eligible based on primary use. FEMA assistance would be prorated based on the percentage of space used for the eligible parking purpose. The parking garage is eligible only because of its association with the hospital.

Facilities Owned by PNP Homeowners' Association

The Woodlands Homeowners' Association is a PNP organization responsible for providing certain services for a 200-home development. The Homeowners' Association's facilities are local neighborhood streets, water system, sewage system, fire station, medical clinic, neighborhood park, community center, and a recreational lake and dam.

Analysis

The Homeowners' Association operates facilities that provide essential social services and therefore is an eligible PNP. The lake and dam, park, and streets do not meet the definition of eligible facilities. The water and sewage systems meet the definition of a utility and are eligible for assistance. The fire station and medical clinic are eligible as emergency and medical facilities. The community center might be eligible if it serves the general public outside the Homeowners' Association community and if it is established and primarily used as a gathering place for a variety of social, educational enrichment, and community service activities.

Recreational Center – Primarily Athletic Services

Westover Recreation Center sponsors a number of activities.

The center is available for rental Friday, Saturday, and Sunday evening to companies, religious groups, clubs, and civic organizations. It is offered as a location for league parties, office parties, seminars, conferences, and holiday celebrations. The center has rooms set aside for seniors' bridge and other card games, along with occasional workshops for photography, pottery and ceramics, and art.

However, the center is primarily oriented to athletics, as exemplified by a large indoor pool and locker room, a half dozen squash/racquetball courts, a weight/exercise room, and a 9,200-square-foot gymnasium/basketball court.

Analysis

Although Westover Recreation Center offers a number of activities generally considered eligible community center functions, it is, first and foremost, a recreation center. In contrast to the definition of an eligible community center, it is neither established nor primarily used as a "gathering place for a variety of social, educational enrichment, and community service activities," even though it does offer some of these.

"Facilities established or primarily used for athletic (or) recreational activities are ineligible community centers." It is not necessary to calculate the percentage of time or space devoted to community activities versus athletic and recreational activities, because Westover is overwhelmingly athletic and recreational. For these reasons, a PNP facility similar to Westover would not be eligible.

Mixed Use Community Center – Nominal Fee

Somerset Community Center consists of a number of meeting rooms, a lending library, social services room, health services room, dining room, activity area with games and a wide-screen TV, darkroom, pianos for practice, ceramics lab, woodshop, computer room, sewing machines, exercise room, and a large foyer. Outside are a fitness trail, garden plots, an outdoor basketball court and softball field, a gazebo, and picnic area.

A nominal membership fee is charged. Classes are offered in piano, bridge, arts and crafts, and cooking. The center sponsors numerous seniors' activities, which include trips, luncheons, and recreational and educational activities. A lunch program is offered for seniors and their spouses. Some exercise classes are also offered. Health screenings and immunizations are regularly offered. Door-to-door transportation is provided to those who need it.

Analysis

By virtue of the wide range of community activities, Somerset Community Center would be an eligible community center. Although it does offer athletic and recreational activities, these are minimal in the time and space allocated to them; therefore, it is not a recreational center. The nominal fee makes it a service to the public.

School Operated by a Religious Institution

The Community Church operates a State-certified private school offering first through eighth grades. The teaching curriculum includes math, science, English, history, physical education, and religious doctrine. The school has an average attendance of 500 students. The campus consists of three buildings: one used primarily for the secular curriculum, one used primarily for religious instruction, and a chapel primarily used for religious worship. Admissions to the school are restricted to members of Community Church.

Analysis

Evaluate the three buildings separately. The two buildings used, respectively, for secular and religious education are eligible as educational facilities. As educational facilities, they are considered to provide critical services and therefore Community Church does not need to apply to SBA to receive funding for permanent work on those buildings. The chapel is eligible as a house of worship. Houses of worship provide noncritical services, so Community Church is required to apply for an SBA loan for the chapel. The restricted admissions process does not affect eligibility. Pursuant to the Stafford Act, no PNP facility is excluded from eligibility because leadership or membership in the organization is limited to people that share a religious faith or practice.

APPENDIX C: WELDED STEEL MOMENT FRAME

FEMA has specific eligibility criteria for inspecting, evaluating, and repairing earthquake damage to buildings constructed with welded steel moment framing connections subject to brittle fracture, such as those constructed prior to 1995 using the prescribed detail of the 1991 Uniform Building Code (Section 2710(g)(B) or its equivalent). FEMA bases the eligibility criteria on *Recommended Post Earthquake Evaluation and Repair Criteria for Welded Steel Moment Frame Buildings* (FEMA 352).[401]

Reimbursement for Preliminary Post-earthquake Assessment

The process of preliminary screening, which helps to rapidly identify buildings that are likely to have sustained significant damage to welded steel moment frame connections, is ineligible for Public Assistance (PA) funding. Preliminary screening is typically performed by building department officials immediately following an earthquake to determine if a building needs further evaluation.

Following the preliminary screening, the Applicant may use the preliminary evaluation method described in FEMA 352 to determine, on a preliminary basis, whether a building has sustained either structural or nonstructural damage that results in a hazardous condition. Preliminary evaluations include:

- A general review of the building's construction characteristics to determine its structural system and vulnerable features;
- A visit to the building site to observe its overall condition and note obvious signs of damage; and
- A determination of an appropriate posting category for the building, on the basis of the preceding results and engineering judgment. Posting categories are described by the following designations:
    - Green – Little or no damage. Poses no immediate threat.
    - Yellow – Structural or nonstructural damage. Limited or localized safety hazard.
    - Red – Significant damage to structural elements. Significant safety hazard.

Preliminary evaluation is eligible only when conditions result in a yellow or red designation.

Reimbursement for Detailed Post-earthquake Evaluations

As recommended in FEMA 352, the Applicant should conduct a detailed evaluation on all buildings determined to have potential welded steel moment frame fractures, as identified in the preliminary assessment, and designated with a yellow or red posting. Eligible work includes the reasonable evaluation of the effects of the identified, significant connection damage to the future performance of the building structure. To be eligible, this evaluation should be limited to the recommendations in FEMA 352, Chapter 4, as follows:

[401] www.fema.gov/media-library/assets/documents/747.

- Visual bottom flange connection inspections performed at locations selected in accordance with FEMA 352, Chapter 4, Method 2 (Inspection of a Sample of Connections) are eligible.
- The inspection of a sample of the total welded steel moment frame connections in the building, in accordance with guidance provided in FEMA 352, Chapter 4, Method 2 is eligible.
- If an Applicant discovers certain types of damage, additional visual inspection of bottom or top flange connections at locations recommended in FEMA 352, Chapter 4, are also eligible but only after the Applicant informs FEMA of the frame damage already discovered and FEMA approves the follow-on inspection.

The eligible work associated with connection inspection includes:

- Removal of necessary architectural finishes, such as plaster/drywall;
- Removal of fire retardants in the inspection area of the connection.;
- Visual inspection; and
- Nondestructive testing as appropriate, necessary, and approved by FEMA. Testing may include liquid dye-penetrant testing or magnetic particle testing, but not ultrasonic testing.

In circumstances where a building is assigned a green posting, visual inspections are only eligible for those connections where the Applicant has found significant damage (as defined in FEMA 352, Chapter 4) associated with the declared earthquake disaster.

Visual inspection of additional connections (at locations recommended by FEMA 352, following the discovery of damaged connections) will also be eligible, but only after the Applicant has informed FEMA of the frame damage already discovered and FEMA approves the follow-on inspection. FEMA may also approve nondestructive testing if the visual inspections indicate a significant potential for concealed damage.

Except as detailed above, any inspections that do not yield discovery of significant connection damage attributable to the earthquake are ineligible.

Generally, detailed analytical or experimental studies or Level 2 evaluations as described in FEMA 352, Chapter 5, are ineligible unless FEMA provides approval before the Applicant initiates the work.

APPENDIX D: FREQUENT COMPLIANCE ISSUES WITH COOPERATIVE PURCHASING PROGRAMS

The following is a list of frequent compliance issues with Federal procurement requirements when Tribal or local government or private nonprofit (PNP) Applicants use cooperative purchasing programs for procurements above the simplified acquisition threshold:

Full and Open Competition

The Applicant must ensure that solicitations used by cooperative purchasing programs include a clear and accurate description of the scope of work or goods actually required. Additionally, cooperative purchasing programs that place overly restrictive requirements on solicitations risk noncompliance with the full and open competition requirements in 2 C.F.R. § 200.319.

Procurement Method

Cooperative purchasing programs must comply with allowable procurement methods in 2 C.F.R. § 200.320. Some of these methods require that Applicants publicly advertise or publicize the solicitations, solicit bids from an adequate number of known suppliers, and award contracts to the responsible, responsive firm with the lowest price or to the responsive firm whose proposal is most advantageous to the program with price and other factors considered.

Socio-economic Contracting

The Applicant must ensure cooperative purchasing programs take the applicable affirmative steps to encourage participation of small businesses, minority businesses, and women owned enterprises. Failure to take any of the affirmative steps violates 2 C.F.R. § 200.321.

Geographic Preferences

Any geographic preferences that a cooperative purchasing program uses in evaluating bids or proposals and any additional terms and conditions in a cooperative purchasing program's pre-negotiated agreements that favor or give preference to local suppliers violates 2 C.F.R. § 200.319(b) and be restrictive of competition.

Contract Provisions

Cooperative purchase programs at times do not include the federally required contract provisions in the agreements with vendors. In accordance with 2 C.F.R. § 200.326, all contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards).

Cost or Price Analysis

The Applicant must conduct an independent cost or price analysis when using cooperative purchasing agreements in accordance with 2 C.F.R. § 200.323.

APPENDIX E: STUMP CONVERSION TABLE

Diameter to Volume Capacity

FEMA quantifies the number of cubic yards of debris for each size of stump based on the following formula:

$$\frac{[(\text{Stump Diameter}^2 \times 0.7854) \times \text{Stump Length}] + [(\text{Root-Ball Diameter}^2 \times 0.7854) \times \text{Root-Ball Height}]}{46{,}656}$$

0.7854 is one-fourth Pi and is a constant.
46,656 is used to convert cubic inches to cubic yards and is a constant.

The formula used to calculate the cubic yardage used the following factors, based upon findings in the field:

- Stump diameter measured 2 feet up from the ground
- Stump diameter to root-ball diameter ratio of 1:3.6
- Root-ball height of 31 inches

Stump Diameter (Inches)	Debris Volume (Cubic Yards)	Stump Diameter (Inches)	Debris Volume (Cubic Yards)
6	0.3	46	15.2
7	0.4	47	15.8
8	0.5	48	16.5
9	0.6	49	17.2
10	0.7	50	17.9
11	0.9	51	18.6
12	1	52	19.4
13	1.2	53	20.1
14	1.4	54	20.9
15	1.6	55	21.7
16	1.8	56	22.5
17	2.1	57	23.3
18	2.3	58	24.1
19	2.6	59	24.9
20	2.9	60	25.8
21	3.2	61	26.7
22	3.5	62	27.6
23	3.8	63	28.4
24	4.1	64	29.4
25	4.5	65	30.3
26	4.8	66	31.2

Stump Diameter (Inches)	Debris Volume (Cubic Yards)	Stump Diameter (Inches)	Debris Volume (Cubic Yards)
27	5.2	67	32.2
28	5.6	68	33.1
29	6	69	34.1
30	6.5	70	35.1
31	6.9	71	36.1
32	7.3	72	37.2
33	7.8	73	38.2
34	8.3	74	39.2
35	8.8	75	40.3
36	9.3	76	41.4
37	9.8	77	42.5
38	10.3	78	43.6
39	10.9	79	44.7
40	11.5	80	45.9
41	12	81	47
42	12.6	82	48.2
43	13.3	83	49.4
44	13.9	84	50.6
45	14.5		

APPENDIX F: HAZARDOUS STUMP WORKSHEET

Applicant: _____ Date: _____

Applicant Representative: _____ Signature: _____

FEMA Representative (if available) _____ Signature: _____

	Physical Location (i.e., Street address, road, cross streets, etc.)	Description of Facility (ROW, Park, City Hall, etc.)	Hazard Yes/No	Global Positioning System (GPS) Location	Tree Size (Diameter)	Eligible Yes/No	Fill for Debris Stumps In CY	Comments (See attached sketch, photo, etc.)
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

APPENDIX G: MOSQUITO ABATEMENT

FEMA may provide reimbursement for mosquito abatement measures at the written request of the SLTT public health officials after FEMA consults with the Centers for Disease Control and Prevention (CDC), based on any of the following:

- Evidence of:
  - Higher levels of disease transmitting mosquitoes in the impacted area following the incident;
  - A significant number of disease-carrying mosquitoes in the area due to the increase in incident-related standing water; or
  - The potential for disease transmission and human exposure to disease carrying mosquitoes based on the detection of arboviral diseases in sentinel organisms (poultry, wild birds, mosquito pools) in the impacted area prior to the incident, discovered during surveillance as part of mosquito abatement activities, or reported human cases in which transmission occurred prior to the incident.
- A determination that a significant increase in the mosquito population and/or the change of biting mosquito species poses a threat to emergency workers who are required to work out-of-doors, thereby significantly hampering response and recovery efforts.

  Such evidence may include an abnormal rise in landing rates or trap counts, significant changes in species composition or estimate of infection rates, when compared to pre-incident surveillance results.
- Verification from medical facilities within the affected area that an increase in the general public's exposure to mosquitoes has directly resulted in secondary infections, especially among those with weakened immune systems such as the elderly, the very young, or the sick. This may occur when increased numbers of residents in impacted areas with extended power outages are forced to open buildings for air circulation.

Terminology

An **arbovirus** is a virus utilizing arthropods as vectors and is transmitted via their feeding to a definitive host.

The **landing rate,** expressed as number of mosquitoes landing per minute, is used as an adult mosquito surveillance measure utilizing human volunteers as bait.

Methoprene Briquettes are formulated with methoprene (compound that mimics the action of an insect growth-regulating hormone and prevents the normal maturation of insect larvae) growth inhibitor and a timed-release carrier that resembles a charcoal briquette.

A **sentinel organism** is an organism, usually fowl, purposely exposed to mosquito bites outdoors to monitor pathogen transmission by mosquitoes.

Seroconversion is the development of detectable antibodies in the blood of a sentinel organism directed against an infectious agent.

Trap count is the number of female mosquitoes captured in a trap receptacle each night the traps are set.

Where possible, a determination of the need for vector control measures should be based on surveillance data provided by local agencies, or on surveillance conducted as a component of the emergency response. Similarly, termination of control efforts should be based on mosquito

density and disease transmission monitoring, and on the degree of exposure to mosquitoes of residents and responders. Information useful in determining the need for emergency mosquito control measures includes:

- The local jurisdiction's mosquito population density estimates pre- and post-disaster, including information about species composition;
- Arbovirus transmission activity indices, including information about the location of surveillance activities; indices may consist of:
  - Infection rates in mosquitoes;
  - Seroconversion in sentinel chickens;
  - Equine case;
  - Human cases;
- The amount and type of flooding (e.g., saltwater/freshwater, coastal/inland);
- The extent and location of damage to housing;
- The extent, location, and anticipated duration of power interruption;
- The anticipated extent and duration of cleanup and recovery operations; and
- A description of the type of mosquito management required (e.g., aerial or ground- based adulticide applications, larvicide applications), and duration of application to reduce the threat and the areas where the interventions are needed.

To be eligible for Public Assistance funding, insecticide formulations must be among those approved and registered by the U.S. Environmental Protection Agency for use in urban areas for mosquito control and must be applied according to label directions and precautions by appropriately trained and certified applicators. Furthermore, mosquito abatement measures must comply with all Federal and SLTT laws, ordinances, and regulations concerning vector control. Mosquito abatement measures include, but are not limited to the following:

- Adulticiding – The ground or aerial spraying of insecticides to kill adult mosquitoes
- Larviciding – The application of chemicals, including methoprene briquettes, by ground or air to kill mosquito larvae or pupae
- Breeding habitat removal or alteration – The modification of potential breeding habitat to make it unsuitable for mosquito breeding or to facilitate larval control, including:
  - Draining or removing standing water in close proximity to homes, schools, sheltering facilities, and businesses;
  - Increased dewatering through the pumping of existing drainage systems; and
  - Dissemination of information (e.g., inserting flyers with resident's water bills, public service announcements, newspaper campaigns) to direct residents to remove the mosquito breeding habitat.

APPENDIX H: SNOW ASSISTANCE

Snow-related activities, including snow removal, de-icing, salting, snow dumps, and sanding of roads and other eligible facilities, is only an eligible emergency protective measure when a winter storm results in record or near-record[402] snowfall.[403] FEMA authorizes snow assistance by county based on a finding that the county received record or near-record snowfall or meets the contiguous county criteria as described below. FEMA evaluates Tribal lands either as part of a requested county or separately.

Record or Near-Record Snowfall

FEMA utilizes data collected by the National Oceanic and Atmospheric Administration's National Centers for Environmental Information (NCEI) to identify the historical 1-, 2-, and 3-day snowfall records for each county. For current event snowfall, FEMA relies primarily on snowfall measurements taken at National Weather Service (NWS) Cooperative Network Stations but accepts measurements from other sources if those measurements are verified as reasonable and accurate by the NWS. Historical 1-, 2-, and 3-day snowfall records by county are available on the NCEI Snow Climatology Database (SCDB) at the following website: www.ncdc.noaa.gov/snow-and-ice/snowfall-extremes. Daily snowfall reports by county are available at: www.ncdc.noaa.gov/snow-and-ice/daily-snow.

FEMA follows the following process to determine record or near-record snowfalls:

- Compare current snowfall amounts with the historical record snowfall amounts for a like number of days without regard for the month in which the record snowfall or current event occurred.
- For multiple-day snowstorms, counties or Tribal lands that meet the 1-day record or near-record requirement on any 1 day, or the 2-day record or near record over 2 consecutive days, or the 3-day record or near record over 3 consecutive days, etc., meets the record or near-record criteria for that county or Tribal lands.
- FEMA relies on the NWS to determine the duration of the snowstorm.
- When data from multiple NWS-verified sources exist within a county or Tribal lands, FEMA compares the highest current event snowfall reported by the NWS within that county or Tribal land with the highest historical record snowfall for that county or Tribal land.
- For counties or Tribal lands that do not have NCEI or NWS historical record snowfall data, use the historical record from the nearest NWS Cooperative Network Station in an adjacent county or Tribal land, even if located in an adjacent State, for determining historical snowfall records.
- If current event snowfall data are not available from the NWS for a county or Tribal land, use the nearest NWS Cooperative Network Station data from an adjacent county, even if located in an adjacent State.
- FEMA may designate a county or Tribal land that does not receive a record or near-record snowfall, but is contiguous to a county (generally referred to as a "core county") that does receive a record or near-record snowfall, for snow assistance if the county or

[402] FEMA generally considers near record as being within 10 percent of the record snowfall.
[403] 44 C.F.R. § 206.227.

Tribal land has current event snowfall that meets or exceeds the current event snowfall of the core county, to which it is contiguous. Base this comparison on the highest current event snowfall received by each county as reported by the NWS.

- Consider counties or Tribal areas that experience snowfalls occurring over a period exceeding 3 consecutive days that do not reach record or near-record snowfalls during a 3-day period, and for which there are no historical snowfall records for a period exceeding 3 days with NCEI or NWS, on a case-by-case basis.

Winter Storm or Snowstorm Declaration Requests

The request for a Major Disaster Declaration must include a request for snow assistance as part of that declaration. All such requests are subject to the requirements and processes established in the Stafford Act and FEMA regulations.[404] In addition to the information required in every declaration request, requests for snow assistance must include the following information:

- Identification of core and contiguous counties for which a snowstorm declaration is requested;
- Duration of snowfall, as identified or confirmed by the NWS; and
- For each requested county or Tribal land, daily snowfall totals from NWS stations or NWS-verified sources and historical record snowfall data from the NCEI.

Generally, the current event weather and snowfall information is included in a statement or report from the NWS describing the event.

FEMA only includes costs related to snow activities as part of the preliminary damage assessment data for counties or Tribal lands that meet the record or near-record criteria or qualify as contiguous counties.

Terminology

A **Core County** is a county that has a record or near record snowfall with PA costs that exceed the annually established countywide per capita impact indicator and is designated for snow assistance under a major disaster declaration.

A **Contiguous County** is a county in the same State that shares a common border with a core county without geographic separation other than by a minor body of water, typically not exceeding one mile between the land areas of such counties.

Other categories of work, including Permanent Work, may be authorized for snowstorm or winter storm declarations as appropriate.

[404] 44 C.F.R. § 206 Subpart B (206.31–48).

APPENDIX I: MOLD REMEDIATION

Mold Remediation Methods

The following list describes common mold remediation methods.

Method	Application
Wet Vacuum	• Use when materials are wet • Use where water has accumulated, such as on floors, carpets and hard surfaces • Do not use when sufficient liquid is not present
Damp Wipe	• Wipe or scrub non-porous (hard) surfaces with water and detergent • Follow instructions listed on the product label
High Efficiency Particulate (HEPA) Vacuum	• Final clean-up after thoroughly dry and contaminated materials are removed • Recommended for cleanup of dust outside of the remediation area • Properly seal HEPA filter • Personal protection equipment is highly recommended; filter and contents must be disposed of in well-sealed bags
Discard	• Use for building materials and furnishings that cannot be remediated • Seal contents in two bags using 6-mil polyethylene sheeting • Cover large items in polyethylene sheeting and seal with duct tape • Sealing materials must be within containment area to limit further contamination

Summarized from Indoor Environments Division of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings": www.epa.gov/mold/mold_remediation.html.

Application of Remediation Methods

The following list outlines typical mold remediation actions.

Water Damaged Material	Action
Books and paper	• Non-valuable items – discard • Valuable/important – photocopy and discard originals • Invaluable items – freeze in frost-free freezer or meat locker, or freeze dry
Carpet and backing	• Wet vacuum • Reduce ambient humidity levels with dehumidifier • Accelerate drying process with fans
Ceiling tiles	• Discard and replace (replacement only eligible as Permanent Work)
Cellulose insulation	• Discard and replace (replacement only eligible as Permanent Work)
Concrete or cinder block surfaces	• Wet vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters

Water Damaged Material	Action
Fiberglass Insulation	• Discard and replace (replacement only eligible as Permanent Work)
Hard surfaces, porous floorings (linoleum, ceramic tile, vinyl)	• Vacuum or damp wipe with water and mild detergent • Scrubbing may be necessary • Allow to dry
Upholstered furniture	• Wet vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters
Wallboard (drywall and gypsum board)	• If obvious swelling and seams are not intact – discard • If no obvious swelling and seams are intact – may be dried in place • Ventilate wall cavity
Window drapes	• Launder or clean according to manufacturer's instructions
Wood surfaces	• Remove water with wet vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters • Wet paneling – discard and ventilate wall cavity

Summarized from Indoor Environments Division of the U.S. Environmental Protection Agency, "Mold Remediation in Schools and Commercial Buildings": www.epa.gov/mold/table1.html.

APPENDIX J: COST-EFFECTIVE PUBLIC ASSISTANCE HAZARD MITIGATION MEASURES

FEMA considers the following mitigation measures to be cost-effective Public Assistance (PA) mitigation if the measures do not exceed 100 percent of the eligible repair cost (prior to any insurance reductions). The mitigation measures must meet all eligibility requirements described in Chapter 8:IV. *Hazard Mitigation*. There may be instances where these measures are required by codes or standards. In such cases FEMA first evaluates whether the work is eligible as a code or standard (See Chapter 8:II. *Codes and Standards*).

I. Drainage Structures:

For Sections I.A. and I.C. (below), PA and environmental and historic preservation (EHP) staff coordinate to determine whether a hydrologic and hydraulic (H&H) study is needed. The Applicant must submit an H&H study to determine the appropriate culvert size with no adverse up or downstream impacts and National Flood Insurance Program regulations when:

- The facility is in a special flood hazard area;
- There is a potential adverse impact to the floodplain;[405]
- There is a potential adverse impact to a federally listed threatened or endangered species, critical habitat, or essential fish habitat;[406] or
- It is required to demonstrate compliance with the Clean Water Act.

A. Replace the structure with multiple structures or a larger structure. The Applicant may use existing SLTT drainage criteria for sizing replacement culverts. The Applicant must consider replacement structures with regard to the total drainage system.

B. For the purpose of erosion control, add properly designed entrance and exit structures, such as a headwall, wingwalls, flared aprons, or energy dissipation measures to increase efficiency and help to minimize scour and erosion. Depending on the severity of erosion, solutions for bank protection may include gabion baskets, rip rap,

Example

Adding a relief culvert located at the same crossing site as a damaged culvert and in the embankment above the flow line of the primary culvert or located upstream of the main culvert. A relief culvert provides an alternate route for the flow if the main culvert is over capacity or gets plugged and prevents sedimentation through the high-flow scouring action.

[405] 44 C.F.R. §§ 9.11(d)(4) and 60.3(b)(7), (c)(10), and (d)(3).

[406] Endangered Species Act 16 U.S.C. §§ 1531-1544 and Magnuson-Stevens Fishery Conservation and Management Act.

cast-in-place concrete, crushed stone or rock, grouted rip rap[407], sheet-piling, geotextile fabric, or similar measures to control erosion. Alternatively, the use of vegetation or a combination of vegetation and construction materials such as live fascines, vegetated geogrids, live crib walls, brush mattresses, root wads, or similar measures are eligible. The Applicant should consider using green infrastructure techniques such as bioswales, bioretention, rain gardens and similar techniques that may be used in public drainage systems.

C. Culverts:

1. Where the alignment of a culvert is inconsistent with existing water flow, realign the culvert vertically or horizontally or relocate the culvert to improve hydraulics and minimize erosion and scour. The Applicant must consider realignment of structures with regard to the total drainage system.
2. Extend the culvert discharge to mitigate erosion and scour by extending the discharge end beyond the toe of the embankment.
3. Install a debris barrier to prevent debris blockage or fins designed to orient floating debris for passage through the culvert.
4. Install a debris barrier riser to allow debris to float up with the rising floodwaters without blocking flow into the culvert.

II. Transportation Facilities:

A. Bridges:

1. Where traffic counts are low, replace with low-water crossings.
2. Install cables to restrain a bridge from being knocked off piers or abutments during floods or earthquakes.
3. Install girder and deck uplift tie-downs to prevent their displacement from the substructure.
4. Install Longitudinal Peaked Stone Toe Protection with nature planting, upstream of a failed abutment, to provide a stable floodplain bench for the protection of the abutment and the adjoining bridge approach. Consider other relevant Bio-engineering applications such as engineered logjams, log vanes or log bendway weir.

B. Marine Pier Ramps: If attached to decking, install open decking or floating decking with uplift-resistant tie-downs and fasteners.

C. Roadways and Railways: Where shoulders are susceptible to overflow from adjacent water courses, stabilize shoulders and embankments with geotextile fabric and revetments.

D. Roadways: Use geotextile drainage blankets between the pavement section and subbase to strengthen subgrade.

[407] Projects involving grouted rip rap may be subject to an environmental assessment and may not be allowable in all instances.

III. Mechanical, Electrical, Plumbing (MEP) Components:

A. Provide seismic bracing for electrical lines, conduit, piping, duct-work, water heaters, and other MEP equipment. Components can be wall mounted, floor mounted, or suspended.

B. Roof-Mounted Equipment: Secure to roof top via a continuous load path, using tie-downs, straps, or other anchoring systems that will resist expected wind forces.

C. Elevate or dry floodproof components or systems vulnerable to flood damage, including equipment controls, electrical panels; heating, ventilation, and air conditioning/machinery rooms; emergency generators; and fuel tanks. When wiring cannot be elevated, replace with equipment suitable for submerged applications.

D. Install switches, circuit isolation and/or quick connect capability to facilitate rapid connection of backup power for any damaged or susceptible mechanical and electrical components.

E. Install camlocks, transfer switches, and electrical panels to facilitate the connection of portable emergency generators.

IV. Pipes:

A. Install pipe joint restraints, flexible piping at pipe/conduit connections, or replace pipes with more ductile material.

B. Install continuous lining or encasement to prevent infiltration or structural collapse.

C. Underground Pipes: Install shut-off valves so that damaged sections of pipe can be isolated.

V. Water/Wastewater:

A. Pumps: If pumps and their attached motors are damaged by stormwater inundation, replace them with submersible or inline pumps as appropriate.

B. Sewer Access Covers: Elevate to the hydraulic grade line. When elevation is not feasible or practicable, install devices to prevent infiltration into access holes such as cast-iron watertight frames and covers.

C. Well Systems: Seal exposed portions of well casing or raise the elevation of the well head to prevent infiltration of flood waters.

D. Raw water intakes: Install buttressing to prevent damage from erosion, scour, and flood debris.

VI. Electric Power Systems:

A. Provide looped distribution service or other redundancies in the electrical service to critical facilities, such as hospitals and fire stations.

B. Install surge suppressors and lightning arrestors.

C. Transformers:

1. Elevate pad transformers above the Base Flood Elevation.

2. Support pole-mounted transformers with multiple poles.

D. Power Poles:

1. Replace damaged poles with higher-rated poles (preferably two classes stronger) of the same or different material. When replacing poles with higher-rated poles, install guys and anchors to provide lateral support for poles supporting pole-mounted transformers, regulators, capacitor banks, reclosers, air-break switches, or other electrical distribution equipment.
2. Remove large diameter lines.
3. Add cross-bracing to H-frame poles to provide additional strength.
4. Power Lines: Add guy-wires or additional support.

VII. Storage Tanks:

A. Anchor or otherwise protect from movement by strengthening or stiffening base connections.

B. Install self-initiating disconnects and shut-off values between tanks and distribution lines to minimize damage and leaks.

VIII. Buildings and Structures:

A. For small support buildings subject to uplift or rollover from high winds, securely anchor the buildings to foundations to prevent toppling or becoming missile hazards.

B. Elevate or dry or wet floodproof buildings.

C. Footings: Where spread footings have been undercut by scour, underpin footings.

D. Siding: Replace with a stronger siding with stronger attachments to the wall sheathing and structure.

E. Vents: Replace with water-resistant vents.

F. Non-structural Building Components: Brace interior walls, partitions, parapets, anchor veneer or cladding, suspended light features, drop ceilings, soffits, and other non-structural elements that could collapse and cause injury or block safe exit of a building during an earthquake or high-wind event.

G. Furnishings: Provide seismic ties, straps, or clips to secure replaced furniture, cabinets, computers, bookcases, and other furnishings.

H. Roofs

1. Install hurricane clips, fasteners, anchors, straps, and connectors that are compatible with the roof system and corrosion-resistant in coastal areas.
2. Strengthen the high-wind pressure areas (e.g., corner zones, roof soffits, overhangs).
3. Strengthen roof openings, such as hatches and skylights.
4. Low Slope Roofs: Replace entire roof covering with a fully adhered roof covering, such as a modified bitumen membrane roof. FEMA does not provide PA mitigation

funding for loose laid insulation or membranes as punctures can cause large amounts of water intrusion. Additionally, FEMA does not provide PA mitigation funding for loose laid roof membranes with loose ballast stones as the stones can become projectiles in high winds and cause damage.

5. Gable Roofs: Replace the gable-end framing with hipped roof framing to reduce wind forces (lower edge pressure; reduced projected wind area) and strengthen the roof framing.
6. Gutters and Downspouts: Upgrade to direct water away from the structure to prevent interior or basement water damage.

I. Doors and Windows:

1. Upgrade the weather stripping to prevent water infiltration.
2. Replace doors, door frames, hinges, and hardware with wind-resistant units.
3. Strengthen windows.
4. Replace glass with impact-resistant material.
5. Install shutters on windows:
   a. Of critical facilities, such as hospitals.
   b. On the lower floors of noncritical facilities most likely to be struck by debris.
   c. Of buildings with very high-value contents that can be damaged by water (such as libraries and document centers).
   d. Of buildings when failure of roofing materials or other portions of nearby structures could create impact hazards.

IX. Signage: Replace sign panels and their supports with a stronger type of system of supports and panels. Consider using multiple support posts and stronger panels and fasteners.

APPENDIX K: CONTRACT PROVISIONS

The following is a list of frequent compliance issues with Federal procurement requirements when Tribal or local government or private nonprofit (PNP) Applicants use cooperative purchasing programs for procurements.

If an Applicant plans to use Federal funds to pay or reimburse equipment expenses or services under a contract, that contract must contain the applicable clauses described in Appendix II to the Uniform Rules (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. Additionally, FEMA recommends certain contract clauses recommended by FEMA.

This appendix outlines the federally required contract provisions in addition to FEMA-recommended provisions applicable to PA applicant contracts. For some of the required clauses, sample language or references to find sample language are listed below. Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not listed since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures. For the clauses which require that exact language be included, the required language is specifically identified below.

The non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

REMEDIES: Applies to all FEMA grant and cooperative agreement programs.

Contracts for more than the simplified acquisition threshold, currently set at $250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, A.

TERMINATION FOR CAUSE AND CONVENIENCE: Applies to all FEMA grant and cooperative agreement programs.

All contracts exceeding $10,000 must address termination for cause and for convenience by the non-Federal entity, including how it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, B.

EQUAL EMPLOYMENT OPPORTUNITY: This requirement applies to all FEMA grant and cooperative agreement programs and exact language below is required.

Standard: Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246**,** *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, C.

Key Definitions.

Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Required Language: 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor 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 contractor 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 contractor 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 contractor 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 contractor's legal duty to furnish information.

(4) The contractor 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 contractor 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 contractor 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 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 contractor 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 contractor 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 applicant 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 applicant so participating is a State, Territorial, 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 applicant 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 applicant 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.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT: This requirement applies to all FEMA contracts awarded by the non-federal entity exceeding $100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Standard: Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity exceeding $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work exceeding the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked beyond 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

Suggested Language: 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including

the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

(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 $26 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 (**write in the name of the Federal agency or the loan or grant recipient**) 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.

CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT: This requirement applies to contracts awarded by a non-Federal entity of amounts exceeding $150,000 under a federal grant.

Standard: If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act

(42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, G.

Suggested Language: The following provides a sample contract clause.

Clean Air Act

1. The contractor 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.

2. The contractor agrees to report each violation to the (**name of applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. 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

1. 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.

2. The contractor agrees to report each violation to the (**name of the applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. 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.

DEBARMENT AND SUSPENSION: This requirement applies to all FEMA grant and cooperative agreement programs.

Standard: Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

Requirements:

1. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530.

2. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.

3. Specifically, a covered transaction includes the following contracts for goods or services:

    a. The contract is awarded by a recipient or subrecipient in the amount of at least $25,000.

    b. The contract requires the approval of FEMA, regardless of amount.

    c. The contract is for federally required audit services.

    d. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of $25,000.

Suggested Language: The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

Suspension and Debarment

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 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).

2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by (**insert name of recipient/subrecipient/applicant**). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (**insert name of recipient/subrecipient/applicant**), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 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.

BYRD ANTI-LOBBYING AMENDMENT: This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of $100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II, I; 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

Standard: Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the Federal awarding agency.

Suggested Language:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying

with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification: If applicable, contractors must sign and submit to the non-Federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor,_____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor 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 Authorized Official

_____
Name and Title of Contractor's Authorized Official

_____
Date

PROCUREMENT OF RECOVERED MATERIALS: This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.

Standard: A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II, J; and 2 C.F.R. § 200.322.

Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Suggested Language:

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
    a. Competitively within a timeframe providing for compliance with the contract performance schedule;
    b. Meeting contract performance requirements; or
    c. At a reasonable price.

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

3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

RECOMMENDED CONTRACT PROVISIONS

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, FEMA recommends the following for PA applicant contracts:

ACCESS TO RECORDS.

Standard: All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS and FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, FEMA is prohibited from providing reimbursement to any SLTT government, or PNP organization for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

Suggested Language:

Access to Records. The following access to records requirements apply to this contract:

1. The Contractor agrees to provide (**insert name of state agency or local or Indian tribal government**), (**insert name of recipient**), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

4. In compliance with the Disaster Recovery Act of 2018, the (**write in name of the non-federal entity**) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

CHANGES: FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the

method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

Standard: To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

DHS SEAL, LOGO, AND FLAGS: FEMA recommends that Applicants include a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Standard: Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).

Suggested Language: "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval."

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS: FEMA recommends that Applicants include an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

Standard: The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

Suggested Language: "This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives."

NO OBLIGATION BY FEDERAL GOVERNMENT: FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Standard: FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

Suggested Language: "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS: FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

Suggested Language. "The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract."

APPENDIX L: VALIDATION OF APPLICANT-PROVIDED COST ESTIMATES

This Appendix provides a checklist that FEMA Public Assistance (PA) staff must use to review and validate cost estimates submitted to FEMA for Permanent Work. FEMA staff may also use relevant portions of this checklist for Emergency Work. FEMA includes this checklist in the associated subaward file in PA Grants Manager.

The steps for validating Applicant-provided cost estimates are as follows:

1. **Verify that the estimate:**
   - ☐ Is prepared by a licensed Professional Engineer or other estimating professional, such as a licensed architect or certified professional cost estimator[408] who certifies that the estimate was prepared in accordance with industry standards;
   - ☐ Includes certification that the estimated cost directly corresponds to the repair of the agreed upon damage;
   - ☐ Is based on unit costs for each component of the scope of work (SOW) and not a lump sum amount; and
   - ☐ Contains a level of detail sufficient for FEMA to validate that all components correspond with the agreed-upon SOW.

2. **Review the scope of work and cost estimate to verify only eligible items are included:**
   - ☐ The scope of work items in the cost estimate are required based on the agreed-upon damage description and dimensions.
   - ☐ The scope of work included ineligible items, and FEMA has removed the ineligible components from the estimate (documentation detailing the components removed and reason for removal is attached).
   - ☐ The scope of work included ineligible items, and FEMA is returning the estimate to the Applicant to revise.

[408] In lieu of a license or certification, an individual with professional experience and proficiency in the field of cost estimating may prepare and sign the cost estimate.

3. **Determine whether unit costs are from an approved source of industry standard information and whether current cost data publications were used:**

   There are numerous sources that may be used in the preparation of cost estimates.

   - ☐ The Applicant used the following appropriate cost estimating resource(s):
     - ☐ Industry standard construction cost estimating resource
       - ☐ RSMeans
       - ☐ XActimate
       - ☐ BNi Costbooks
       - ☐ Marshall & Swift
       - ☐ Sweet's Unit Cost Guide
       - ☐ Other_____
     - ☐ Local cost data from_____
     - ☐ Contract unit costs from recently completed projects
     - ☐ Other: _____
   - ☐ FEMA returned the estimate to the Applicant to revise as the Applicant did not use an appropriate cost estimate resource.

4. **Determine the components of unit costs:**

Ensure that the components that make up the unit costs are fully understood. The purpose of this review is to ensure that components of the unit costs are not duplicated elsewhere in the cost estimate.

- ☐ The estimate contained sufficient information related to the components of the unit costs:
  - ☐ Each unit cost represented a complete and in-place cost that included all labor, equipment, materials, small tools, incidentals, and hauling costs necessary to complete that element of work.
  - ☐ Unit costs were analyzed to determine if general contractor overhead and profit were included in the unit costs:
    - ☐ Both general contractor and subcontractor overhead and profit are included in the unit costs and these costs are not duplicated elsewhere in the estimate or in the Cost Estimating Format (CEF).
    - ☐ Overhead and profit are not included in the unit costs.
    - ☐ Overhead and profit are duplicated in the estimate.
    - ☐ Costs for surveying, construction inspection, and permit compliance fees are not duplicated (i.e., not included within a unit cost and separately in the estimate).
  - ☐ The estimate did not contain sufficient information related to the components of the unit costs. FEMA requested additional information from the Applicant.

5. Validate the cost estimate for completeness and reasonableness.

- ☐ The costs of work items are reasonable based on a representative sample.
- ☐ FEMA has determined costs for items of work in the estimate to be unreasonable (see attached). Therefore, the estimate was returned to Applicant to revise.
- ☐ All items of work included in the cost estimate are eligible.
- ☐ FEMA has removed ineligible items of work from the cost estimate (see attached).
- ☐ All work activities required to complete the work are quantified with unit costs.
- ☐ The cost estimate included lump sum amounts for work activities that need to be adjusted to unit prices. FEMA has returned the estimate to the Applicant for revision.
- ☐ The appropriate locality adjustment factor from the cost estimating publication is used for each line item, as applicable. Where historical costs were used, a locality adjustment was not applied, but cost escalation factors were added.
- ☐ The appropriate locality adjustment factor from the cost estimating publication was not used (see attached) or, as historical costs were used, a locality adjustment was inappropriately applied.
- ☐ Cost items checked are within 10 percent of the local average weighted unit prices or industry standard construction cost data (based on a review of at least six of the ten largest cost items against local average weighted unit prices or industry standard construction cost data (or there were less than ten cost items and all were reviewed) and based on reviewing at least 25 percent of the remaining cost items against local average weighted unit prices or industry standard construction cost data.
- ☐ Cost items checked are not within 10 percent of the local average weighted unit prices or industry standard construction cost data; therefore, the estimate was returned to Applicant to revise.

Date Review Completed_____

Date of Information Requests to Applicant_____

Name of Reviewer_____

Reviewer Signature_____

APPENDIX M: ALTERNATIVE PROCEDURES FOR PERMANENT WORK

Alternative Procedures for Permanent Work under Section 428 of the Stafford Act is designed to achieve better recovery outcomes and simplify the delivery of assistance.

Objectives

- Focus on outcome-based recovery;
- Enable applicants to use funds in a manner that best meets their specific needs for recovery;
- Promote long-term resiliency;
- Improve future preparedness; and
- Simplify the delivery of assistance.

Benefits of using the Pilot

- No requirement to rebuild communities back to what existed prior to the disaster.
- Applicants can share funds across all Permanent Work Pilot Projects.
- Excess funds may be used to reduce risk and improve future disaster operations.
- Hazard mitigation funding may be added to Replacement Projects.

Project Requirements

- In order to receive the benefits:
  - ✓ The project must be a Large Project.
  - ✓ Applicants must accept a fixed cost offer.
- The fixed cost is based on the estimated amount to rebuild to pre-disaster design and function.
- FEMA processes any project that does not have a fixed cost accepted within 18 months of the declaration date using standard PA policies.
- FEMA will consider time extensions on a case by case basis.

The attached table summarizes the differences between the Alternative Procedures and standard PA procedures:

Alternative Procedures	*Standard Procedures*
Fixed-cost project with use of excess funds.	Actual cost project. No retention of excess funds associated with the approved estimate.
May use funds across all Alternative Procedures Projects.	Can only use funds toward the specific work identified in each specific Project.
After FEMA approves a SOW, FEMA only requires approval for changes that involve buildings or structures aged 45 years or older, ground disturbing activities, or work in or near water.	After FEMA approves a SOW, FEMA requires approval for any change to the SOW.

Do not need to track costs associated with changes to the SOW.	Must track costs associated with all changes to the SOW.
Do not need to track costs to specific work items. Only need to track the total costs associated with the Alternative Procedures Projects.	Must track costs specific to each work item within each individual project.
Do not need to track work to specific projects. Only need to substantiate that the work is related to the approved SOW covered in the Alternative Procedures Projects.	Must track all work to each individual project.

APPENDIX N: WORK ELIGIBILITY CONSIDERATIONS BY TYPE OF FACILITY

Work Eligibility Considerations: All Facilities		
PAPPG Reference	**Topic**	**Applicability**
Chapter 4:II, *Facility Eligibility*	**Facility Eligibility**	All Permanent Work.
Chapter 4:I, *General Work Eligibility*	**General Work Eligibility** ○ Result of Declared Incident ○ Within Designated Area ○ Applicant's Legal Responsibility	All work.
Chapter 6, *Cost Eligibility*	**Cost Eligibility**	All eligible work.
Chapter 7, *Emergency Work Eligibility*	**Emergency Work Eligibility**	All Emergency Work.
Chapter 7:I, *Debris Removal (Category A)*	**Debris Removal Eligibility**	All Debris Removal Work.
Chapter 4:I.C; Chapter 7 and ; Appendix A	**Environmental and Historic Preservation (EHP) Compliance**	All work (including ground disturbance for any staging areas, access roads, parking, landscaping, grading, or utilities).
Chapter 8:III, Codes and Standards	**Codes and Standards**	Upgrades to pre-disaster design required by codes or standards.
Chapter 8:IV, *Hazard Mitigation*; and Appendix J	**Hazard Mitigation**	Hazard mitigation is any sustained action (work) taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects
Chapter 8:V, *Repair vs. Replacement*	**Replacement**	The purpose of the 50% Rule is to make an early determination on whether it is more prudent to repair or replace a facility. It is not intended to be a full calculation of all eligible project costs.
Chapter 8:VI, *Relocation*	**Permanent Relocation**	FEMA may approve funding for and require restoration of an Applicant's destroyed (i.e., eligible for replacement) facility at a new location.
Chapter 8:III.E, *Floodplain Management and Wetland Protection* and VII, *Facility Located in or Impacting a Floodplain*	**Floodplain Considerations**	All Permanent Work in or impacting the floodplain

Work Eligibility Considerations: All Facilities		
Chapter 8:IX.F, *Landslides and Slope Stabilization*	**Landslides and Slope Stabilization**	Facilities damaged due to a landslide or slope instability triggered by the incident.
Chapter 7:II.V, *Temporary Relocation of Essential Services*	**Temporary Relocation**	Certain essential community service facilities.

Work Eligibility Considerations: Roads and Bridges				
Road (including surface, base, shoulders, roadside ditches, guardrails, lighting, signage, sidewalks, etc.), drainage structure (culvert, low-water crossing), bridge (including, but not limited to, decking, pavement, piers, girders, abutments, slope protection, approaches, guardrails, lighting, signage, sidewalks)				
EHP laws, regulations, and executive orders (EOs) that frequently apply: NEPA; NHPA, ESA, CWA, CAA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.				
PAPPG Reference	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 7:I	**A**	**Debris removal and disposal to eliminate an immediate threat**	○ Removal of debris placed on public ROWs from commercial properties unless pre-approved by FEMA ○ Removal of materials related to the construction, repair, or renovation of either residential or commercial structures	Must distinguish between incident-related debris versus debris generated by other recent events.
Chapter 7:II.J	**B**	**Emergency access** **If the extent of damage or blockage makes these areas inaccessible, work related to providing access is eligible.** ○ This includes clearing debris from or conducting emergency repairs to an access facility, such as a road or bridge. ○ Eligible work is limited to that necessary for the access to remain passable	○ Removal of debris from a privately-owned access facility UNLESS no other access point exists, and damage or debris impedes emergency access. ○ Emergency repairs to privately-owned roads UNLESS no other access point exists, damage impedes emergency access, and repair eliminates temporary housing needs.	The Applicant must complete all necessary legal processes or obtains rights-of-entry and agreements to indemnify and hold harmless the Federal Government.

Work Eligibility Considerations: Roads and Bridges				
Road (including surface, base, shoulders, roadside ditches, guardrails, lighting, signage, sidewalks, etc.), drainage structure (culvert, low-water crossing), bridge (including, but not limited to, decking, pavement, piers, girders, abutments, slope protection, approaches, guardrails, lighting, signage, sidewalks)				
EHP laws, regulations, and executive orders (EOs) that frequently apply: NEPA; NHPA, ESA, CWA, CAA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.				
Chapter 7:II.X	**B**	**Emergency repairs to address an immediate threat**	○ Emergency repair of Federal-Aid highways (under FHWA authority).	
Chapter 6:XXI.A and B; Chapter 8:IX.A	**C**	**Restoration: Permanent repair or replacement**	○ Loss of useful service life. ○ Loss of toll revenue. ○ Construction of additional lanes even if required by a code or standard, except when code requires changing a one lane bridge to two lanes. ○ Costs related to maintenance of roads are ineligible. ○ Federal-aid routes are ineligible for Permanent Work.	○ Must distinguish between minor incident-related damage and damage related to age of the road, traffic flow, and frequent rain events. ○ Need date of construction for culvert and any nearby structures that may be altered or affected by the project. ○ Hydrology and hydraulic study to evaluate upstream and downstream impacts are necessary if replacing culvert with larger culvert.

Work Eligibility Considerations: Water Control Facilities				
Dam or reservoir, irrigation and water conveyance (canal, pipeline, lateral, pump station, siphon), aqueducts, drainage channels, sediment and debris basins, stormwater retention and detention basins, coastal shoreline protection facilities (seawall, revetment), flood control work (levee, floodwall, flood control channel, dam, or basin, and other structure primarily used for flood control), navigational waterways, and shipping channels				
EHP laws, regulations, and EOs that frequently apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.				
PAPPG Reference	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 7:I.C	**A**	**Debris removal and disposal (from natural feature or engineered facility) to eliminate an immediate threat** ○ For navigable waterways, debris removal eligibility is limited to a max depth of 2 feet below the low tide draft of the largest vessel that utilized the waterway prior to the incident. ○ For non-navigable waterways, debris removal is only eligible to the extent that it is necessary to eliminate an immediate threat if the debris: - Obstructs, or could obstruct, intake structures; - Could cause damage to structures; or - Is causing, or could cause, flooding to property during the occurrence of a 5-year flood.	○ Removal of debris to eliminate a threat of flooding to agricultural land. ○ Random surveys to look for debris. ○ Debris removal from flood control works that are under the specific authority of NRCS and/or USACE.	○ Must distinguish between incident-related debris versus pre-existing debris and debris generated by other incidents. ○ Cannot duplicate funding provided by another Federal agency (e.g., USACE or NRCS).

Work Eligibility Considerations: Water Control Facilities				
Dam or reservoir, irrigation and water conveyance (canal, pipeline, lateral, pump station, siphon), aqueducts, drainage channels, sediment and debris basins, stormwater retention and detention basins, coastal shoreline protection facilities (seawall, revetment), flood control work (levee, floodwall, flood control channel, dam, or basin, and other structure primarily used for flood control), navigational waterways, and shipping channels				
EHP laws, regulations, and EOs that frequently apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.				
Chapter 7:II.H; Chapter 8:IX.2	**B**	**Flood-fighting (on natural feature or engineered facility) or emergency repairs (engineered and maintained facility only) to address an immediate threat** ○ The repair of deliberate breaches or removal of flood-fighting measures is eligible as part of the Category B emergency protective measure project.	○ Emergency protective measures to reduce the threat of flooding to agricultural land. ○ Emergency repair of flood control works that are under the authority of USACE or NRCS. ○ Flood-fighting measures on a flood control work that is under the authority of the NRCS. ○ Permanently increasing height or capacity of a flood control work. ○ De-watering of flooded areas primarily for the purpose of drying land. ○ Emergency repair of a secondary levee riverward of a primary levee. ○ Emergency repairs of flood control works under the authority of NRCS and USACE and of federally constructed coastal shoreline protective features under the authority of USACE.	○ USACE can conduct flood fighting activities. USACE cannot reimburse Applicants for flood fighting efforts.
Chapter 8:IX.B.1 and 2	**D**	**Debris and silt removal required to restore capacity (engineered and maintained facilities only)** ○ Eligible, but only if the Applicant provides documentation to establish the pre-disaster capacity of the facility AND that the facility was actively used and maintained with a regular clearance schedule.	○ Restoration of flood control works under the authority of USACE or NRCS.	

Work Eligibility Considerations: Water Control Facilities				
Dam or reservoir, irrigation and water conveyance (canal, pipeline, lateral, pump station, siphon), aqueducts, drainage channels, sediment and debris basins, stormwater retention and detention basins, coastal shoreline protection facilities (seawall, revetment), flood control work (levee, floodwall, flood control channel, dam, or basin, and other structure primarily used for flood control), navigational waterways, and shipping channels				
EHP laws, regulations, and EOs that frequently apply: NEPA; NHPA, ESA, CWA, EOs 11988 and 11990; projects involving work in waterways usually require Section 404 permits – permits issued by the USACE as required by the CWA.				
Chapter 8:IX.B.2	**D**	**Restoration: Permanent Repair or Replacement** ○ PNP irrigation facilities are only eligible if they provide water for essential services of a governmental nature to the general public for water for drinking water supply, fire suppression, or electricity generation.	○ Restoration of natural channels, lakes, and shorelines—that is, any feature that is not improved and maintained. ○ Restoration of PNP irrigation systems that provide water solely for agricultural purposes. ○ Restoration of federally constructed coastal shoreline protective features. ○ Restoration of flood control works under the authority of USACE or NRCS.	

Work Eligibility Considerations: Buildings, Vehicles, and Equipment				
EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990				
PAPPG Reference	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 7:II.B	**B**	**Extracting water and clearing mud, silt, or other accumulated debris from eligible facilities if the work is conducted expeditiously for the purpose of addressing an immediate threat (if the work is only necessary to restore the facility, it is Permanent Work, not Emergency Work)**	○ Conducted on private property UNLESS FEMA approves the work because: - The immediate threat is widespread, affecting numerous homes and businesses such that it is a threat to the health and safety of the general public; - The Applicant has legal authority to perform the work; and - The Applicant obtained rights-of-entry and agreements to indemnify and hold harmless the Federal Government.	
Chapter 8:IX.C.1	**E**	**Removal of mud, silt, or other accumulated debris is eligible as Permanent Work when conducted in conjunction with restoration of the facility.**		
Chapter 7:II.B	**B**	**Mold remediation to address immediate threat of additional damage** ○ Includes post-remediation sampling to confirm remediation is complete.	○ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following the incident.	○ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold.
Chapter 8:IX.C.1	**E**	**Mold remediation when conducted in conjunction with restoring the facility** ○ Post-remediation sampling to confirm remediation is complete.	○ Mold remediation required as a result of poor facility maintenance or failure to take protective measures in a reasonable amount of time following the incident.	○ Pre-remediation mold sampling is only eligible when sampling reveals presence of mold.

Work Eligibility Considerations: Buildings, Vehicles, and Equipment				
EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990				
PAPPG Reference	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 7:II.	**B**	**Emergency protective measures to address an immediate threat** ○ Buttressing, bracing, or shoring. ○ Barricading and safety fencing. ○ Flood protection, such as sandbagging. ○ Emergency repairs to prevent further damage.		
Chapter 7:II.U	**B**	**Demolition to address an immediate threat** ○ Demolition of private structures may be eligible when collapse is imminent, and an immediate threat exists to the general public subject to additional requirements.	○ Removal of slabs or foundations that do not present a health or safety hazard. ○ Removal or covering concrete pads and driveways. ○ Exception to both – Structures in a buyout program funded by FEMA through the HMGP.	○ If securing an unsafe structure and the surrounding area to prevent access is sufficient to alleviate the threat to public safety, demolition may not be necessary or eligible.
Chapter 7: II.S	**B**	**Safety inspections** ○ To establish whether a building is safe for entry, occupancy, and lawful use, as well as posting appropriate placards. ○ Eligible for both public and private buildings.	○ Inspections associated with: ▪ A determination of Substantial Damage under the community's floodplain management ordinance. ▪ A determination of whether the building needs to be elevated or relocated. ▪ Ensuring repairs are completed in accordance with building codes and standards.	

Work Eligibility Considerations: Buildings, Vehicles, and Equipment				
EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, CAA, ESA and EOs 11988 and 11990				
PAPPG Reference	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 6:XVII, 8:IX.C.1 and Appendix C	**E**	**Post-earthquake inspection and evaluation of welded steel moment frames in buildings** ○ To determine the level of disaster-related damage requiring repair.	○ Preliminary assessment to determine which buildings are likely to have sustained damage to welded steel moment frame connections. ○ Detailed analytical or experimental studies. ○ Inspections that do not yield discovery of significant connection damage attributable to the earthquake.	○ The repair of the damaged frame connections to pre-earthquake design in accordance with FEMA 352, Chapter 6, is eligible, but only if FEMA approves a specific SOW for the repairs prior to the Applicant performing the work. ○ Repair of the architectural finishes and fire retardants removed in the area of the damage are also eligible.
Chapter 6:XXI.C.; 8:I.; III.; VII, IX.C, C.1 and C.2	**E**	**Restoration – Permanent repair or replacement** ○ Repair or replacement of buildings (to achieve pre-disaster design, capacity, and / or function) ○ Repair or replacement of building components, vehicles or equipment with items similar in age, condition, and capacity.	○ Tax assessments. ○ Additional capacity necessary due to increased population or use, even if required by code. ○ Americans Disabilities Act (ADA), if the Applicant was notified of being in violation of a requirement prior to the incident and did not bring the facility into compliance, then accessibility requirements related to the violation are ineligible.	○ Need date(s) of construction of all facilities in the project area. ○ Check National Register of Historic Places or a State historic register. ○ Identify whether the building is located in the 100-year floodplain (500-year for critical actions). ○ Public Housing Authority facility(s) is only eligible for Permanent Work if Congress does not appropriate funds to HUD for emergency capital needs for the facility. ○ Must consider the age of the building, roof, and building systems; evidence of regular maintenance; severity and impacts of incident when distinguishing between incident-related damage and pre-existing damage. ○ Comply with federally required codes and standards when repairing or replacing building.

Work Eligibility Considerations: Contents				
Furnishings, equipment, consumable supplies, files, records, research-related contents, animals, irreplaceable collections and individual objects, library books, and publications.				
PAPPG Reference	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 7.II.B	**B**	**Address an immediate threat** ○ Removal and storage of contents to minimize additional damage		
Chapter 8:IX.C	**E**	**Restoration – Permanent repair or replacement** ○ Replacement of destroyed contents with items similar in age, condition, and capacity. ○ Recovering and stabilizing records. ○ Stabilization of irreplaceable collections and individual objects is eligible. ○ Re-shelving, cataloging, and other work incidental to the replacement of library books and publications.	○ Replacing used items with new items, unless a used replacement item is not reasonably available. ○ Establishing new information databases. ○ Manually re-entering data into new computers ○ Scanning re-established hardcopy files into computers to create digital files. ○ Deciphering photocopies of damaged hard copies. ○ Research-related contents and animal replacement, if a comparable item/animal is not available for purchase at a reasonable cost. ○ Replacement of rare books, collections, or objects.	○ Applicants may replace contents with different items used for the same general purpose. ○ Eligible funding is capped at the estimated cost for equivalent items.

Work Eligibility Considerations: Utilities				
Water storage, treatment plants, and delivery systems; power generation, transmission, and distribution facilities, including, but not limited to, natural gas systems, wind turbines, generators, substations, and power lines; sewage collection systems and treatment plants; communication systems				
EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, ESA, CAA, CWA, and EOs 11988 and 11990				
PAPPG Reference	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 6:XXI. A and D; 7:II.X	**B**	**Emergency protective measures to address an immediate threat** ○ Buttressing, bracing, or shoring. ○ Barricading and safety fencing. ○ Flood protection, such as sandbagging. ○ Emergency repairs to prevent further damage. ○ Residential electrical meter repair	○ Revenue lost due to shutdown of a utility. ○ Increased operating costs, such as increased costs for obtaining an alternative source of power because of the shutdown of a power generation plant.	○ Work performed under an exigent circumstance that restores the pre-disaster design and function of the facility in accordance with codes and standards is Permanent Work (Category F), not Emergency Work (Category B). ○ Rural electric cooperatives, municipal utilities, and public power districts frequently use time and equipment contracts for power distribution system repairs. Costs under these contracts are subject to certain criteria. ○ Limited ROW clearance required to access a damaged facility may be eligible.
Chapter 6:XVII and 8:IX.D	**F**	**Restoration** ○ Permanent repair or replacement of any component of system, including buildings, structures, or systems, even if not contiguous. ○ Electrical conductor replacement subject to specific criteria. ○ Inspection or assessment of damaged components of a system. ○ Inspection or assessment of an inaccessible structure or component of a system may be eligible, but only when there is evidence of damage, such as when sunken ground appears above a water pipeline.	○ General post-disaster surveys, inspections, and assessments, such as video inspection of sewer lines.	

Work Eligibility Considerations: Parks, Recreation, and Other				
EHP laws, regulations, and EOs that frequently apply: NEPA, NHPA, CZMA, CBRA, ESA, CWA, and EOs 11988 and 11990				
PAPPG Reference	**Category**	**Eligible Work (including, but not limited to):**	**Ineligible Work and Costs**	**Other Considerations**
Chapter 7:II.	**B**	**Emergency protective measures to address an immediate threat** ○ Buttressing, bracing, or shoring. ○ Barricading and safety fencing. ○ Flood protection, such as sandbagging. ○ Emergency repairs or stabilization to eliminate or lessen an immediate threat.	○ Work performed under an exigent circumstance that restores the pre-disaster design and function of the facility in accordance with codes and standards is Permanent Work, not Emergency Work	
Chapter 8:IX.E	**G**	**Restoration – Permanent repair or replacement** ○ Restoration of engineered beaches is subject to specific eligibility criteria.	○ Restoration of federally constructed beaches or shoreline protection facilities. ○ Restoration of PNP parks and recreational facilities, including supporting facilities such as roads, buildings, and utilities. ○ Restoration of natural, unimproved features. ○ Replacement of dead trees, shrubs, and other vegetation (unless necessary for slope stabilization, erosion control, minimizing sediment runoff, or restoring the function of the facility). ○ Replacement of destroyed crops; cosmetic or aesthetic vegetation.	

MUTUAL AID AGREEMENT
for the
COVID-19 Vaccination Effort

This Mutual Aid Agreement ("AGREEMENT") between the County of Orange, a political subdivision of the State of California, ("COUNTY" or "LEAD AGENCY") and _____ ("MUTUAL AID PARTNER" or "PROVIDING JURISDICTION") pertaining to mutual aid assistance provided under the Orange County Operational Area Agreement ("OAA") is made and entered into as of _____, 2021. COUNTY and MUTUAL AID PARTNER are individually referred to as "PARTY" and collectively referred to as "PARTIES."

NOTE: Use of such an agreement does not guarantee state or federal reimbursement.

WHEREAS, this event and associated conditions will collectively be referred to as the Novel Coronavirus COVID-19 Vaccination Effort ("COVID-19 Vaccination Effort"); and

WHEREAS, COVID-19 is a world-wide pandemic resulting in significant health and economic impacts across the globe;

WHEREAS, on February 26, 2020, the Orange County Health Officer declared a Health Emergency;

WHEREAS, on February 26, 2020, the Chair of the Emergency Management Council issued a Proclamation of Local Emergency pursuant to the requirements of the California Emergency Services Act, which was ratified by the Board of Supervisors on March 2, 2020;

WHEREAS, on March 4, 2020, the Governor of the State of California proclaimed a state of emergency in response to the COVID-19 pandemic pursuant to the California Emergency Services Act;

WHEREAS, on March 13, 2020, the President of the United States issued a Major Disaster Declaration for California (FEMA-4482-DR-CA) in response to the COVID-19 pandemic pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"). This action made the State of California, local and Indian tribal governments and certain private non-profit (PNP) organizations ~~are~~ eligible to apply for reimbursement from the Federal ~~emergency~~Emergency Management Agency (FEMA) Public Assistance (PA) Program[1].

WHEREAS, the COUNTY has implemented a vaccination effort ("COVID-19 Vaccination Effort") intended to vaccinate all eligible community members free-of-charge to curtail the impacts of COVID-19 on residents throughout the County;

[1] See https://www.fema.gov/assistance/public/program-overview for more information.

WHEREAS, residents in County unincorporated areas and those residing within the boundaries of incorporated cities within the County of Orange are equally impacted by COVID-19 and will equally benefit from receipt of COVID-19 vaccinations;

WHEREAS, implementation of the COVID-19 Vaccination Effort is an intensive effort requiring significant resources and coordination across jurisdictions on a day-to-day basis;

WHEREAS, the County formed the Operation Independence Incident Management Team (IMT) to coordinate the planning and operation of COVID-19 regional vaccination sites and mobile clinics, including all staffing scheduling and obtaining services and supplies, equipment and facilities.

WHEREAS, COUNTY is seeking resources including but not limited to staffing, services and supplies, equipment and facilities to ensure the safe, expeditious and effective operation of COVID-19 Vaccination Effort vaccination sites;

WHEREAS, MUTUAL AID PARTNER is interested in providing staff to assist in the COVID-19 Vaccination Effort;

WHEREAS, COUNTY and MUTUAL AID PARTNER wish to clarify the terms by which Mutual Aid assistance and reimbursement will be provided by the Parties in implementing the COVID-19 Vaccination Effort;

WHEREAS, COUNTY and MUTUAL AID PARTNER are members of the Orange County Operational Area (~~OAA~~OA) for the coordination of Mutual Aid Emergency Response as ~~provide~~provided for under the California Emergency Services Act~~; and~~

~~**WHEREAS**, FEMA and Cal OES have determined that staff hours expended on the COVID-19 Vaccination Program are eligible for reimbursement on straight-time and overtime rates;~~

~~**WHEREAS**, Section 6.1 of the~~. The Orange County Operational Area Agreement ~~provides that COUNTY~~describes the cooperative and mutual handling of duties and ~~each Subdivision are each individually responsible for developing, submitting,~~responsibilities within Orange County related to disaster preparedness, response and ~~receiving their own emergency aid, loans or grants from any source~~recovery, including ~~local, state, and federal governments, and that each is individually responsible for the timeliness, accuracy, and compliance of its own expenditures submitted for reimbursement through such mechanisms;~~

~~**WHEREAS**, as related to the COVID-19 Vaccination Effort, FEMA and Cal OES have directed that the COUNTY operate as the Lead Agency and submit reimbursement claims on behalf~~the coordination of the emergency functions of ~~other jurisdictions and entities providing personnel or resources to~~ the ~~COVID-19 Vaccination Program vaccination sites;~~

~~**WHEREAS**, COUNTY and MUTUAL AID PARTNER wish to comply~~Operational Area with ~~FEMA and Cal OES reimbursement directives and clarify the terms by which Mutual Aid assistance will be provided by the~~

~~Parties in implementing the COVID-19 Vaccination Effort~~all other public agencies, corporations, organizations, and affected private persons within the Operational Area;

NOW, THEREFORE, COUNTY and MUTUAL AID PARTNER agree to the following terms to guide their dealings as they pertain to participation in the COVID-19 Vaccination Effort.

A. Limitation of Liability

1. Indemnification

i. By MUTUAL AID PARTNER: MUTUAL AID PARTNER agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by MUTUAL AID PARTNER pursuant to this Agreement. If judgment is entered against MUTUAL AID PARTNER and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY Indemnitees, MUTUAL AID PARTNER and COUNTY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

ii. By COUNTY: COUNTY agrees to indemnify MUTUAL AID PARTNER, and hold MUTUAL AID PARTNER, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("MUTUAL AID PARTNER Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by COUNTY pursuant to this Agreement. If judgment is entered against COUNTY and MUTUAL AID PARTNER by a court of competent jurisdiction because of the concurrent active negligence of MUTUAL AID PARTNER or MUTUAL AID PARTNER Indemnitees, COUNTY and MUTUAL AID PARTNER agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

2. Waiver of Claims

i. Each PARTY hereto agrees to waive all claims against all other PARTIES hereto for any loss, damage, personal injury or death occurring in consequence of the performance of this Mutual Aid Agreement; provided, however, that such claim is not a result of gross negligence or willful misconduct by a PARTY hereto or its personnel.

ii. Each PARTY to this Agreement waives all claims against all other PARTIES to this Agreement for compensation for any loss, damage, personal injury, or death occurring to personnel and/or equipment as a consequence of the performance of this agreement.

3. Governmental Immunity:

To the fullest extent authorized by law, all activities performed under this agreement are deemed to be governmental functions. Neither COUNTY or MUTUAL AID PARTNER, nor their employees, except in cases of willful misconduct, gross negligence, or bad faith shall be liable for the death of or injury to persons, or for damage to property when complying or attempting to comply with this Agreement.

4. Insurance:

   i. Each PARTY shall be responsible for providing insurance for its own employees and representatives.

   ii. Claims for injuries incurred while participating in the COVID-19 Vaccination Effort will be submitted under the Workers Compensation policy of the injured PARTY's employer. (i.e., COUNTY employees/volunteers will submit under the COUNTY's policy and MUTUAL AID PARTNER employees/volunteers will submit under the MUTUAL AID PARTNER's policy.)

B. Billing and Reimbursement

1. Reimbursement Rules

Regardless of the source of funds by which Vaccination Effort Reimbursement Requests are reimbursed, the PARTIES agree for the sake of consistency and accuracy:

i. To abide by the principles set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended (Stafford Act), Title 42 of the United States Code (U.S.C.) § 5121 et seq.; Title 44 of the Code of Federal Regulations (C.F.R.), Part 206; and 2 C.F.R., Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

ii. To be guided by the concepts outlined within FEMA Public Assistance Program and Policy Guide (Exhibit 2).

iii. To be further guided by COVID-19-specific response and recovery guidance issued by federal and state agencies related to vaccination efforts.

~~1.~~2. MUTUAL AID PARTNER Responsibilities:

i. Submit ~~Public Assistance~~Vaccination Effort Reimbursement Requests to COUNTY at a minimum of once every 30 days according to schedule provided by COUNTY.

ii. Submit all ~~Public Assistance~~Vaccination Effort Reimbursement Requests in the format attached to this Agreement (Exhibit 1) or as otherwise may be required by the ~~County, FEMA or Cal OES~~COUNTY for services rendered by MUTUAL AID PARTNER representatives. Failure to submit timely Vaccination Effort Reimbursement Requests in the recommended format may result in a denial of reimbursement and require resubmittal of Request.

~~.~~ Ensure that ~~each Public Assistance Reimbursement Request complies with FEMA Public Assistance Program and Policy Guide (Exhibit 2).~~

~~v.~~iii. ~~Ensure that~~, for each ~~Public Assistance~~Vaccination Effort Reimbursement Request submitted, all COVID-19 Vaccination Effort direct labor expenditures (includes labor burden and excludes overhead) are documented and certified by the MUTUAL AID PARTNER to be in compliance with COUNTY~~, Cal OES, and FEMA~~ requirements.

~~vi.~~iv. Ensure that for each ~~Public Assistance~~Vaccination Effort Reimbursement Request submitted, all personnel resources are reconciled with COUNTY vaccination site personnel records.

~~vii.~~v. Exclude from each ~~Public Assistance~~Vaccination Effort Reimbursement Request incidental expenditures such as mileage, meals, lodging, etc.

~~viii.~~vi. Provide any additional documentation requested by COUNTY~~, FEMA or Cal OES~~ in support of the MUTUAL AID PARTNER's ~~Public Assistance~~Vaccination Effort Reimbursement Request.

~~ix.~~vii. Maintain records for audit, as described within the FEMA Public Assistance Program and Policy Guide (Exhibit 2). MUTUAL AID PARTNER shall make records available for inspection upon request of the ~~County, FEMA or Cal OES~~COUNTY.

~~x.~~viii. Remedy any audit finding related to ~~Public Assistance~~Vaccination Effort Reimbursement Requests~~ disallowed by FEMA or Cal OES~~, including any audit finding identified under the Improper Payments Elimination and Recovery Improvement Act (IPERIA).

~~xi.~~ix. MUTUAL AID PARTNER agrees ~~that~~ to provide sufficient documentation, as defined by the COUNTY~~ shall not be directly liable~~, to ensure adequate validation of costs for reimbursement. As necessary during this public health crisis, MUTUAL AID PARTNER ~~incurred costs or expenses associated~~will assist with ~~MUTUAL AID PARTNER's participation in~~ the COVID-19 Vaccination Effort and ~~that reimbursement shall be based solely on what has been approved~~ensure that cost documentation is submitted to the COUNTY for review and verification to ensure County has complete cost documentation to support County reimbursement ~~by FEMA and Cal OES~~requests.

~~2.~~3. COUNTY Responsibilities

i. Conduct an initial review for completeness of MUTUAL AID PARTNER ~~Public Assistance~~Vaccination Effort Reimbursement Request and supporting documentation ~~prior to submitting the~~for consistency with Reimbursement Rules (Section B.1 herein).

~~i.~~ Submit MUTUAL AID PARTNER Vaccination Effort Reimbursement Request to ~~Cal OES and FEMA.~~

~~iii.~~ii. ~~Submit MUTUAL AID PARTNER Public Assistance Reimbursement Request~~third party reimbursement funding grantors within 30 days of receipt of complete request, including backup documentation, from MUTUAL AID PARTNER.

~~iv.~~iii. Monitor the status of the MUTUAL AID PARTNER ~~Public Assistance~~Vaccination Effort Reimbursement Request and inform the MUTUAL AID PARTNER of progress.

~~v.~~iv. ~~Facilitate between FEMA, Cal OES, and~~ Work with MUTUAL AID PARTNER to resolve any issues with ~~the Public Assistance~~ Vaccination Effort Reimbursement ~~Request~~Requests.

~~vi. Transfer authorized Reimbursement payments to~~ Reimburse MUTUAL AID PARTNER ~~upon receipt from Cal EOS.~~

~~viii.~~v. ~~Notify~~when the ~~MUTUAL AID PARTNER of any auditing or monitoring requests from Cal OES or FEMA and facilitate direct communication between the auditor and MUTUAL AID PARTNER~~COUNTY has determined that sufficient documentation has been received and reimbursement funds are available.

vi. In response to auditing or monitoring requests made by third party reimbursement funding grantors, COUNTY will work with MUTUAL AID PARTNER to ensure adequate documentation is gathered to effectively respond to requests for information.

~~3.~~4. Modifications

This agreement is subject to program modifications that may be made ~~by FEMA or Cal OES~~to Reimbursement Rules by state and federal legislative and regulatory authorities.

C. Disputes

Any controversy or claim between the PARTIES arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

D. Termination

Any PARTY may withdraw from this Agreement upon 30 days written notice.

MUTUAL AID PARTNER:

By _____
(Signature)
Name:
Title:
Agency:
Date:

COUNTY OF ORANGE

By _____
(Signature)
Name:
Title:
Date:

Attachment C

Title V -- Emergency Assistance Programs

Sec. 501. Procedure for Declaration (42 U.S.C. 5191)

(a) Request and Declaration - All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

(b) Certain Emergencies Involving Federal Primary Responsibility - The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title [Sections 502 or 503] with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.

(c) Indian Tribal Government Requests -

(1) In General - The Chief Executive of an affected Indian tribal government may submit a request for a declaration by the President that an emergency exists consistent with the requirements of subsection (a).

(2) References - In implementing assistance authorized by the President under this subchapter in response to a request of the Chief Executive of an affected Indian tribal government for an emergency declaration, any reference in this subchapter or subchapter III (except sections 5153 and 5165d of this title [Sections 310 and 326]) to a State or the Governor of a State is deemed to refer to an affected Indian tribal government or the Chief Executive of an affected Indian tribal government, as appropriate.

(3) Savings Provision - Nothing in this subsection shall prohibit an Indian tribal government from receving assistance under this subchapter through a declaration made by the President at the request of a State under subsection (a) if the President does not make a declaration under this subsection for the same incident.

Sec. 502. Federal Emergency Assistance (42 U.S.C. 5192)

(a) Specified - In any emergency, the President may -

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OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE
333 West Santa Ana Boulevard, Suite 407
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.ocgov.com

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 2
July 27, 2021

MEMORANDUM

July 15, 2021

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session to be held on Tuesday, July 27, 2021, for the Board to consider anticipated litigation pursuant to Government Code section 54956.9(d)(2).

Accordingly, please prepare the Agenda Item to read:

> "CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – SIGNIFICANT EXPOSURE TO LITIGATION pursuant to Government Code section 54956.9(d)(2).
> Number of Cases: One Case.
>
> RECOMMENDED ACTION: Conduct Closed Session."

Thank you.

Leon Page

LJP:jb

cc: Members of the Board of Supervisors
Frank Kim, CEO