



SOUTH CAROLINA

EMERGENCY MANAGEMENT DIVISION

Pinnacle Mountain Fire (FEMA-5162-FM-SC) Project 5162-0011: Paris Mountain Wildfire Outreach and Education Campaign Approval

Recipient-Subrecipient Hazard Mitigation Grant Program Federal Award Agreement

THIS AGREEMENT is entered into by the State of South Carolina, Office of the Adjutant General, South Carolina Emergency Management Division (hereinafter referred to as the “Recipient”) and the Greenville County (hereinafter referred to as the “Subrecipient”). This Agreement covers the project described in Exhibit A.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING FACTS AND CONDITIONS:

WHEREAS, on November 12, 2016, the Federal Emergency Management Agency (hereinafter referred to as “FEMA”) issued a Fire Management Assistance declaration designated FEMA-5162-FM-SC for the State of South Carolina as a result of the Pinnacle Mountain Fire. On July 23, 2018, FEMA notified the Recipient that Post-Fire funds would be available on a cost-sharing basis for hazard mitigation measures first for affected counties and statewide if funds were not able to be used in affected counties;

WHEREAS, FEMA as a result of the disaster declaration made funding available under the Hazard Mitigation Grant Program (hereinafter referred to as “HMGP”); and

WHEREAS, the federal share is limited to 75% of eligible expenditures, and the Subrecipient shall provide from Subrecipient’s funds the other 25% of eligible expenditures of the total eligible costs; and

The estimated cost of this project is \$10,000 to be cost shared at \$7,500 federal and \$2,500 local.

NOW THEREFORE, the Recipient and the Subrecipient agree to the following:

1) DEFINITIONS

Unless otherwise indicated, the following terms shall be defined as stated herein.

- a) “Activities” are defined as stated in 44 CFR 204.431.
- b) “Allowable costs” are defined as stated in 44 CFR 206.439.

- b) Without delay, Subrecipient shall advise Recipient of any insurance coverage for mitigation measures identified in the HMGP Application and of any entitlement to compensation or indemnification from such insurance. All such duplicate benefits are “ineligible costs” that the Subrecipient shall reimburse to the Recipient without delay. The Subrecipient also shall reimburse the Recipient if the Subrecipient receives duplicate benefits from any other source for the work identified on the applicable HMGP Application for which Subrecipient has received payment from Recipient.
- c) In the event that Recipient should determine that Subrecipient has received duplicate benefits, by its execution of this Agreement, the Subrecipient gives Recipient the authority to offset the sum of any such duplicate benefits by withholding it from any other funds otherwise due and owing to Subrecipient or to use such remedies available at law or equity to the repayment of said sums to Recipient.

5) ENVIRONMENTAL PLANNING AND PERMITTING LAWS

- a) Subrecipient shall be responsible for the implementation and completion of the approved projects described in the HMGP Application in a manner acceptable to Recipient and in accordance with applicable legal requirements.
- b) If applicable, the contract documents for any project undertaken by Subrecipient, and any land use permitted by or engaged in by Subrecipient, shall be consistent with the local government comprehensive plan.
- c) Subrecipient shall ensure that any development or development order complies with applicable planning, permitting, and building requirements.
- d) Subrecipient shall engage such competent, properly licensed engineering, building, and other technical and professional assistance at all project sites as may be needed to ensure that the project complies with the contract documents.

6) REQUIRED DOCUMENTATION REVIEWS AND INSPECTIONS

- a) Subrecipient shall create and maintain documentation of work performed and costs incurred sufficient to permit a formal audit comporting with ordinary, customary, and prudent public accounting requirements. Upon the failure of Subrecipient to create and maintain such documentation, Recipient may terminate further funding under this Agreement, and Subrecipient shall reimburse to Recipient all payments disbursed earlier to Subrecipient together with any and all accrued interest.
- b) Documentation must include supporting documentation (invoices, canceled checks, daily activity reports, payroll records, time sheets, executed contracts, receipts, purchase orders, billing statements, etc.).
- c) Recipient will inspect all projects to ensure that work has been performed within the scope of work specified in the HMGP Application. Costs of work not performed within the approved scope of work shall not be eligible for funding.

9) FINAL PAYMENT

- a) Recipient shall disburse the final payment to Subrecipient upon the performance of the following conditions:
 - i) Subrecipient shall have completed the project to the satisfaction of FEMA and the Recipient in accordance with the approved scope of work;
 - ii) Subrecipient shall have submitted documentation substantiating costs incurred in compliance with this agreement, grant requirements, and federal regulations and completion of work;
 - iii) Recipient shall have performed a final inspection;
 - iv) The project listing and certification shall have been reviewed by Recipient;
 - v) Subrecipient shall have requested final reimbursement.

10) RECORDS MAINTENANCE

- a) The Subrecipient agrees to maintain all records pertaining to the project and the funds received under this Agreement until all issues relating to inspections and audits are complete and all actions or resolutions are resolved. Records shall be maintained for three (3) years after the date FEMA completes closeout of the Recipient's final project.
- b) Access to those records must be provided at reasonable times to the Comptroller General of the United States, the Recipient, its employees and agents, and to FEMA, its employees and agents.
- c) The Subrecipient, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to the Recipient, its employees, and agents (including auditors retained by the Recipient), and to FEMA, its employees and agents. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday.
- d) Recipient may unilaterally terminate this Agreement for refusal by the Subrecipient or its contractors or subcontractors to allow public access to all documents, papers, letters or other materials that are made or received by Subrecipient or its contractors and subcontractors in connection with this Agreement.

11) RECOVERY OF FUNDS

- a) If upon final inspection, final audit, or other review by Recipient, FEMA or other authority determines that the disbursements to Subrecipient under this Agreement exceed the eligible costs, Subrecipient shall reimburse to Recipient the sum by which the total disbursements exceed the eligible costs within forty-five (45) days from the date Subrecipient is notified of such determination.

12) REPAYMENT BY SUBRECIPIENT

- a) All refunds or repayments due to the Recipient under this Agreement are to be made payable to the order of "South Carolina Emergency Management Division" and mailed

15) MODIFICATION

- a) The Recipient, the Subrecipient, or FEMA may request modifications to this Agreement, including work to be completed on the HMGP Application and the performance period. However, the party requesting the modifications must do so in writing. The requested modification may become effective only after approval by the Recipient, the Subrecipient, and FEMA.

16) TIME FOR PERFORMANCE

- a) FEMA will not establish activity completion timeframes for individual subawards. The period of performance for all subgrant awards will begin on April 23, 2019, and end April 23, 2022.
- b) Time extensions are, per Item 15 of this Agreement, a modification, and requests must be submitted in writing. If any extension request is denied by the Recipient, FEMA, or not sought by the Subrecipient, Subrecipient shall only be reimbursed for eligible project costs incurred up to the latest extension for completed projects.
- c) Failure to complete any project will be adequate cause for the termination of funding for that project and reimbursement of any and all project costs to Recipient.
- d) For phased projects only:
 - i) The Subrecipient shall provide all phase one deliverables no later than one year after the date of award shown on the award letter provided by FEMA. If extenuating circumstances beyond the control of the Subrecipient prevent timely completion of phase one deliverables, Subrecipient shall submit a time extension request no later than sixty (60) days prior to the expiration of the initial one-year period for completion. The time extension request must be made in writing with a detailed justification for delay, the current status of the work, a timeline for completion of remaining elements, and a projected completion date. Failure to submit a timely request for an extension may result in denial of the extension, loss of funding for the project, or the imposition of other specific conditions or remedies for noncompliance as needed to fulfill the Recipient's obligations under the Award as described in 44 C.F.R. § 206.438(a), 2 C.F.R. Part 200, and the FEMA-State Agreement.

17) CONTRACTS WITH OTHERS

- a) If the Subrecipient contracts with any contractor or vendor for performance of any portion of the work required under this Agreement, the Subrecipient shall incorporate into its contract with such contractor or vendor an indemnification clause holding Recipient and Subrecipient harmless from liability to third parties for claims asserted under such contract. The Subrecipient also shall document in the quarterly report the subcontractor's progress in performing its work under this Agreement. Subrecipient shall provide the contractor with a copy of this Agreement.
- b) To the extent that the Subrecipient has outstanding or uncompleted contracts for work requiring reimbursement under this Agreement, the Subrecipient agrees to modify its contracts in accordance with this section.

- b) Upon the occurrence of any one or more of the foregoing events of default, Recipient may at its option give notice in writing to Subrecipient to cure its failure of performance if such failure may be cured. Upon the failure of Subrecipient to cure, Recipient may exercise any one or more of the following remedies:
 - i) Terminate this Agreement upon not less than fifteen (15) days' notice of such termination by certified letter to the Subrecipient, such notice to take effect when delivered to Subrecipient;
 - ii) Commence a legal action for the judicial enforcement of this Agreement;
 - iii) Withhold the disbursement of any payment or any portion of a payment otherwise due and payable under this Agreement with Subrecipient; and
 - iv) Take other remedial actions that may otherwise be available under law.
- c) Recipient may terminate this Agreement for any misrepresentation of material fact, for failure or nonperformance of any Agreement condition or obligation, or for noncompliance with any applicable legal requirement.
- d) Upon the rescission, suspension or termination of this Agreement, the Subrecipient shall refund to Recipient all funds disbursed to Subrecipient under this Agreement.
- e) Notwithstanding anything to the contrary elsewhere in this Agreement, the rescission, suspension or termination of this Agreement by Recipient shall not relieve Subrecipient of liability to Recipient for the restitution of funds advanced to Subrecipient under this Agreement, and Recipient may set off any such funds by withholding future disbursements otherwise due Subrecipient under this Agreement until such time as the exact amount of restitution due Recipient from Subrecipient is determined. In the event that FEMA should deobligate funds formerly allowed under this Agreement, the Subrecipient shall immediately repay such funds to Recipient. Any deobligation of funds or other determination by FEMA shall be addressed in accordance with the regulations of that Agency.

20) LIABILITIES

- a) Recipient assumes no liability to third parties in connection with this Agreement. Unless the Subrecipient is a governmental entity covered under S.C. Code Ann. § 15-78-20 (1976), the Subrecipient shall be solely responsible to any and all contractors, vendors, and other parties with whom it contracts in performing this Agreement.
- b) Unless the Subrecipient is a governmental entity within the meaning of the preceding sentence, Subrecipient shall indemnify Recipient from claims asserted by third parties in connection with the performance of this Agreement, holding Recipient and Subrecipient harmless from the same.
- c) For the purpose of this Agreement, the Recipient and Subrecipient agree that neither one is an employee or agent of the other but that each one stands as an independent contractor in relation to the other.
- d) Nothing in this Agreement shall be construed as a waiver by Recipient of any legal immunity, nor shall anything in this Agreement be construed as consent by either of the

- a) Attachments/exhibits to this Agreement are incorporated into this Agreement by reference as if set out fully in the text of the Agreement itself.
- b) In the event of any inconsistencies between the language of this Agreement and the Attachments to it if any, the language of the Attachments shall be controlling but only to the extent of such inconsistencies.

24) TERM

- a) This Agreement shall be effective upon execution and terminate upon completion of, and final payment for, all approved projects, subject to any modification.

25) NOTICE AND CONTACT

- a) All notices under this Agreement shall be in writing and shall be delivered by email, by facsimile, by hand, or by certified letter to the Recipient at the following addresses:

FOR THE RECIPIENT:

Kim Stenson, Director
 SC Emergency Management Division
 2779 Fish Hatchery Road
 West Columbia, SC 29172

FOR THE SUBRECIPIENT:

Joseph Kernell, County Administrator
County of Greenville,
301 University Ridge
Greenville, SC 29601

26) AUTHORIZATION

The Subrecipient hereby authorizes Jessica Stumpf as its primary designated agent, and Caleb Johnson as its alternate agent to execute Payment Requests, necessary certifications, and other supplementary documentation.

IN WITNESS HEREOF, the Recipient and Subrecipient have executed this Agreement;

Recipient: 

Kim Stenson, Governor's Authorized Representative

South Carolina Emergency Management Division

Date 17 Jan 20

Subrecipient: 

Title **JOSEPH M. KERNELL**
Greenville County Administrator

Date 1-29-20

JOSEPH M. KERNELL
Greenville County Administrator
 Printed

[Subrecipient's Federal Employer Identification No. (FEIN): 57-6000356

[Subrecipient's Data Universal Numbering System (DUNS): 077991206

**HMGP 5162-5162-0011 Paris Mountain
 Wildfire Outreach and Education Campaign Approval**

EXHIBIT B

Statement of Assurances and Conditions

The Recipient hereby assures and certifies compliance with all Federal statutes, regulations, policies, guidelines and requirements. Additionally, to the extent the following provisions apply to this Agreement, the Subrecipient assures and certifies that:

- 1) It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the sub-recipient's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the subrecipient to act in connection with the application and to provide such additional information as may be required.
- 2) It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purpose constructed.
- 3) It will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the grant program(s) have been met.
- 4) It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms to the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grantor agency may need.
- 5) It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and will see that work on the project will be prosecuted to completion with reasonable diligence.
- 6) It will not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bonds, whichever is the longer.
- 7) It will provide without cost to the United States and the Recipient all lands, easements and rights-of-way necessary for accomplishments of the approved work.
- 8) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, reimbursements, advances, contracts, property, discounts of other Federal financial assistance extended after the date hereof to the Subrecipient by FEMA, that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance and that the United States and the Recipient shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Subrecipient, its successors, transferees, and assignees, and the person or persons whose signatures appear on this agreement as authorized to sign this assurance on behalf of the Subrecipient.

- 20) It will comply with all appropriate environmental and historical preservation laws. Any conditions set forth from FEMA or the Recipient relating to environmental and historical preservation shall be compulsory.
- 21) It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1974 (16 USC 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of Investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
- 22) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice).
- 23) With respect to demolition activities, it will:
- a. Create and make available documentation sufficient to demonstrate that the Subrecipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - b. Return the property to its natural state as though no improvements had ever been contained thereon.
 - c. Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in Subrecipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the South Carolina Department of Health and Environmental Control and the county health department.
 - d. Provide documentation of the inspection results for each structure to indicate: safety hazards present; health hazards present; and/or hazardous materials present.
 - e. Provide supervision over contractors or employees employed by Subrecipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - f. Leave the demolished site clean, level and free of debris.
 - g. Notify Recipient promptly of any unusual existing condition which hampers the contractors work.
 - h. Obtain all required permits.
 - i. Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site, and provide documentation of such closures.
 - j. Comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
 - k. Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act of 1955, as amended (42 U.S.C. 7401, et seq.), Section 508 of the Clean Water Act of 1977, as amended (42 U.S.C. 7419, et seq.) Executive Order 11738, and the U.S. Environmental Protection Agency regulations

bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

33. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Subrecipient in this Agreement, in any subsequent submission or response to Recipient request, or in any submission or response to fulfill the requirements of this Agreement, and such information, representations, and materials are incorporated by reference. The lack of accuracy thereof or any material changes shall, at the option of the Recipient and with thirty (30) days written notice to the Subrecipient, cause the termination of this Agreement and the release of the Recipient from all its obligations to the Subrecipient.
34. This Agreement shall be construed under the laws of the State of South Carolina, and venue for any actions arising out of this Agreement shall lie in Richland County Circuit Court. If any provision hereof is in conflict with any applicable statute or rule or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict and shall be deemed severable but shall not invalidate any other provision of this Agreement.
35. 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 any 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.
36. Where the Subrecipient is unable to certify to any of the statements in this certification, the Subrecipient shall attach an explanation to this Agreement.