Snohomish County
Department of Emergency Management

720 80th St. SW, Bldg. A
Everett, WA 98203
(425) 388-5060
www.snoco.org

8/4/2026

Re: FY25 Urban Area Security Initiative (UASI) Homeland Security Grant E26-346

Dear Benjamin Olson,

Snohomish County is in receipt of grant agreement FY25 Urban Area Security Initiative (UASI) Homeland Security Grant E26-346, which includes pass-through dollars from the United States Department of Homeland Security (DHS). As you may be aware, Snohomish County, along with other local government plaintiffs, has successfully challenged grant terms and conditions that DHS and its operating division and agencies have included in grant agreements and other documents.

Pursuant to a Preliminary Injunction in *County of Santa Clara et al. v. Noem et al.,* 25-cv-08330-WHO (N.D. Cal.)(issued November 21, 2025)("Order"), in which Snohomish County is a plaintiff, DHS and its operating divisions, agencies and other persons in active concert or participation with them are "restrained and enjoined from directly or indirectly taking any action to withhold, freeze, or condition funds from the plaintiffs based on" the Discrimination Condition and EO Condition (collectively referred to as the "DHS Grant Conditions") as further described in the Order. *See* Order at 76. A copy of the Preliminary Injunction is enclosed with this letter for your reference.

Snohomish County has carefully reviewed agreement FY25 Urban Area Security Initiative (UASI) Homeland Security Grant E26-346. We note that agreement FY25 Urban Area Security Initiative (UASI) Homeland Security Grant E26-346 contains the enjoined DHS Grant Conditions and/or materially similar conditions and that the DHS Grant Conditions and materially similar conditions are also found within other documents incorporated by reference, such as *The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2025 Homeland Security Grant Program*, the *Preparedness Grants Manual, FM-207-23-0001 August 2025* and the DHS Award Letter. Snohomish County is unable to modify the text of agreement FY25 Urban Area Security Initiative (UASI) Homeland Security Grant E26-346, or any of the incorporated documents in order to excise the enjoined provisions.

Similarly, Snohomish County has found reference to the immigration conditions permanently enjoined under the State of Washington's litigation in *Illinois v. FEMA*, 25-206 WES (D.R.I.)(issued September 24, 2025). Unlike the DHS Grant Conditions, however agreement FY25 Urban Area Security Initiative (UASI) Homeland Security Grant E26-346, includes language in the DHS Award Letter exempting the imposition of the immigration conditions.

Snohomish County's execution of agreement FY25 Urban Area Security Initiative (UASI) Homeland Security Grant E26-346, and continued billing for reimbursement is contingent upon the absence of the enjoined DHS Grant Conditions, immigration conditions or any materially similar terms and conditions in compliance with the Order referenced above in *County of Santa Clara v. Noem* and the State's permanent injunction under *Illinois v. FEMA*. By virtue of the Order referenced above in *County of Santa Clara v. Noem* and the State's permanent injunction under *Illinois v. FEMA*, and for so long as these or subsequent orders remain in effect, any such nominal reference to the enjoined conditions shall not result in those conditions being imposed or enforced against Snohomish County even if the text of those inoperative conditions remains in agreement FY25 Urban Area Security Initiative (UASI) Homeland Security Grant E26-346, or any of the incorporated documents or via any digital signature platform or submittal portal of any kind whatsoever.

Snohomish County expressly withholds consent to, refuses and reserves all rights to refuse any such enjoined term or condition or materially similar term or condition that DHS or the State of Washington may attempt to impose upon the County prospectively or retroactively. In the event that the Order in *County of Santa Clara v. Noem* or the State's permanent injunction under *Illinois v. FEMA* are lifted or otherwise expire, the enjoined conditions will not be imposed or enforced against Snohomish County as to the period such orders were in effect, and the enjoined conditions shall not be applied automatically to Snohomish County, and Snohomish County reserves the right to revisit its submissions.

Sincerely,

____

Signature

Lacey Harper,
Executive
Director,
Snohomish County

Enclosure

Washington Military Department
HOMELAND SECURITY GRANT PROGRAM AGREEMENT FACE SHEET

1. Subrecipient Name and Address: **County of Snohomish** **Department of Emergency Management** **720 80th Street SW, Building A** **Everett, WA 98203-6217**	2. Grant Agreement Amount: **$1,484,603**	3. Grant Agreement Number: **E26-346**
4. Subrecipient Contact, phone/email: **Anjelah Boyd, 425-312-0608** **angela.boyd@co.snohomish.wa.us**	5. Grant Agreement Start Date: **September 1, 2025**	6. Grant Agreement End Date: **August 31, 2028**
7. Department Contact, phone/email: **Ben Olson, 253-512-7224** **benjamin.olson@mil.wa.gov**	8. Unique Entity Identifier (UEI): **LG8NG8JNJD83**	9. UBI # (state revenue): **313-014-461**

10. Funding Authority:
Washington Military Department (the Department) and the **U.S. Department of Homeland Security** (DHS)

11. Federal Funding Identification #: **EMW-2025-SS-05030**	12. Federal Award Date: **1/30/2026**	13. Assistance Listings # & Title: **97.067 - 25HSGP (UASI)**
14. Total Federal Award Amount: **$19,631,821.00**	15. Program Index # & OBJ/SUB-OBJ: **753UB, 753UC, 753UH, 753UL, 753UQ, 753UZ / NZ**	16. EIN **91-6001368**
17. Service Districts: BY LEGISLATIVE DISTRICTS: **1, 10, 21, 38-40, 42, 48** BY CONGRESSIONAL DISTRICTS: **1, 2**	18. Service Area by County(ies): **Snohomish**	19. Women/Minority-Owned, State Certified: ☒ N/A ☐ NO ☐ YES, OMWBE #_________

20. Agreement Classification ☐ Personal Services ☐ Client Services ☒ Public/Local Gov't ☐ Research/Development ☐ A/E ☐ Other_______	21. Contract Type (check all that apply): ☐ Contract ☒ Grant ☒ Agreement ☐ Intergovernmental (RCW 39.34) ☐ Interagency
22. Subrecipient Selection Process: ☒ "To all who apply & qualify" ☐ Competitive Bidding ☐ Sole Source ☐ A/E RCW ☐ N/A ☐ Filed w/OFM? ☐ Advertised? ☐ YES ☐ NO	23. Subrecipient Type (check all that apply) ☐ Private Organization/Individual ☐ For-Profit ☒ Public Organization/Jurisdiction ☐ Non-Profit ☐ CONTRACTOR ☒ SUBRECIPIENT ☐ OTHER

24. PURPOSE & DESCRIPTION:

The objective of the Federal Fiscal Year (FFY) 2025 Homeland Security Grant Program (25HSGP) is to enhance state, local, tribal, and territorial efforts to prevent, protect against, and respond to terrorist attacks, to strengthen the nations communities against potential terrorist threats. 25HSGP provides funding to implement investments that build, sustain, and deliver the core capabilities essential to achieving the National Preparedness Goal of a prepared and resilient nation. 25HSGP supports core capabilities across the five mission areas of prevention, protection, mitigation, response, and recovery based on allowable costs. HSGP is comprised of three interconnected grant programs: State Homeland Security Program (SHSP), Urban Areas Security Initiative (UASI), and Operation Stonegarden (OPSG). Together, these grant programs fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration.

The Department is the Recipient and Pass-through Entity of the 25HSGP DHS Award Letter for Grant No. EMW-2025-SS-05030 ("the Grant"), which is incorporated in and attached hereto as Attachment C and has made a subaward of Federal award funds to the Subrecipient pursuant to this Agreement. The Subrecipient is accountable to the Department for use of Federal award funds provided under this Agreement.

IN WITNESS WHEREOF, the Department and Subrecipient acknowledge and accept the terms of this Agreement, including all referenced attachments which are hereby incorporated, and have executed this Agreement as of the date below. This Agreement Face Sheet; Special Terms & Conditions (Attachment A); General Terms and Conditions (Attachment B); DHS Award Letter **EMW-2025-SS-05030** (Attachment C), Work Plan (Attachments D-1, D-2, Budget (Attachment E), Timeline (Attachment F); Build America, Buy America Act Self-Certification (Attachment G) and all other documents and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.

In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1. **Applicable Federal and State Statutes and Regulations**
2. **DHS/FEMA Award and program documents**
3. **Work Plan, Timeline, and Budget**
4. **Special Terms and Conditions**
5. **General Terms and Conditions, and,**
6. **Other provisions of the Agreement incorporated by reference.**

WHEREAS, the parties have executed this Agreement on the day and year last specified below.

FOR THE DEPARTMENT:

____
Signature Date
Seth Nickerson, Chief Financial Officer
Washington Military Department

BOILERPLATE APPROVED TO FORM:
David Merchant 10/31/2025
Assistant Attorney General

FOR THE SUBRECIPIENT:

____
Signature Date
Lacey Harper, Executive Director
Snohomish County Department of Emergency Management

APPROVED AS TO FORM (if applicable):

____
Signature Date

SPECIAL TERMS AND CONDITIONS

ARTICLE I. KEY PERSONNEL

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

SUBRECIPIENT		DEPARTMENT	
Name	**Anjelah Boyd**	Name	**Ben Olson**
Title	**Fiscal Supervisor**	Title	**Program Coordinator**
Email	**angela.boyd@co.snohomish.wa.us**	Email	**benjamin.olson@mil.wa.gov**
Phone	**425-312-0608**	Phone	**253-512-7224**
Name	**Dara Salmon**	Name	**Peggy Simmons**
Title	**Deputy Director**	Title	**Program Manager**
Email	**dara.salmon@co.snohomish.wa.us**	Email	**peggy.simmons@mil.wa.gov**
Phone	**425-388-5071**	Phone	**253-512-7114**
Name	**Lucia Schmit**	Name	**General Information**
Title	**Director**		
Email	**lucia.schmit@co.snohomish.wa.us**	Email	**Preparedness.grants@mil.wa.gov**
Phone	**425-239-1190**		

ARTICLE II. ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS

The Subrecipient shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 25HSGP program, including, but not limited to, all criteria, restrictions, and requirements of "*The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2025 Homeland Security Grant Program*" (hereafter "the NOFO"), the *Preparedness Grants Manual FM 207-23-0001 August 2025* (hereafter "the Manual"), the DHS Award Letter for the Grant, and the federal regulations commonly applicable to DHS/FEMA grants, all of which are incorporated herein by reference. The *DHS Award Letter* is incorporated in this Agreement as Attachment C.

The Subrecipient acknowledges that since this Agreement involves federal award funding, the period of performance may begin prior to the availability of appropriated federal funds. The Subrecipient agrees that it will not hold the Department, the state of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:

The following requirements apply to all DHS/FEMA Preparedness Grants administered by the Department.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

a. The Subrecipient must make a case-by-case determination whether each agreement it makes for the disbursement of 25HSGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.331.

b. If the Subrecipient becomes a pass-through entity by making a subaward to a subrecipient:

i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of 25HSGP funds, including, but not limited to, those contained in 2 CFR 200.

ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 25HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of the NOFO, the Manual, the DHS Award Letter for the Grant in Attachment C, and the federal regulations commonly applicable to DHS/FEMA grants.

iii. The Subrecipient shall be responsible to the Department for ensuring that all 25HSGP federal award funds provided to its subrecipients are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in this Agreement (Attachment C).

iv. The Subrecipient must follow their own policies and procedures to eliminate or reduce the impact of conflicts of interest when making subawards, adhering to any applicable federal or state statutes or regulations. Any real or potential conflicts of interest must be reported to the Department in writing upon discovery.

2. BUDGET, REIMBURSEMENT, AND TIMELINE

a. Within the total Grant Agreement Amount, travel, subcontracts, salaries, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis upon completion unless otherwise provided in this Agreement.

b. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.

c. If the Subrecipient chooses to include indirect costs within the Budget (Attachment E), additional documentation is required based on the applicable situation. As described in 2 CFR 200.414 and Appendix VII to 2 CFR 200:

i. If the Subrecipient receives direct funding from any Federal agency(ies), documentation of the rate must be submitted to the Department Key Personnel per the following:

A. More than thirty five million dollars ($35,000,000), the approved indirect cost rate agreement negotiated with its federal cognizant agency.

B. Less than thirty five million dollars ($35,000,000), the indirect cost proposal developed in accordance with Appendix VII of 2 CFR 200 requirements.

ii. If the Subrecipient does not receive direct federal funds (i.e., only receives funds as a subrecipient), the Subrecipient must either elect to charge a de minimis rate of fifteen percent (15%) or 15% of modified total direct costs or choose to negotiate a higher rate with the Department.

d. For travel costs, the Subrecipient shall comply with 2 CFR 200.475 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at https://www.gsa.gov, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without prior written approval by Department Key Personnel. All international travel requires prior FEMA approval.

e. Reimbursement requests will include a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to Reimbursements@mil.wa.gov no later than the due dates listed within the Timeline (Attachment F).

Reimbursement request totals should be commensurate to the time spent processing by the Subrecipient and the Department.

f. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the Subrecipient consistent with record retention requirements of this Agreement and be made available upon request by the Department and auditors.

g. The Subrecipient must request **prior** written approval from Department Key Personnel to waive or extend a due date in the Timeline (Attachment F). Waiving or missing deadlines serves as an indicator for assessing an agency's level of risk of noncompliance with the regulations, requirements, and the terms and conditions of the Agreement and may increase required monitoring activities. For waived or extended reimbursement due dates, all allowable costs should be submitted on the next scheduled reimbursement due date contained in the Timeline. Any request for a waiver or extension of a due date in the Timeline must be submitted to the Department Key Personnel **sufficiently in advance** of the due date to provide adequate time for Department review and consideration and may be granted or denied within the Department's sole discretion.

h. For SHSP and UASI subrecipients, the total Law Enforcement Terrorism Prevention Activities (LETPA) amount included in the Budget (Attachment E) must be used for eligible LETPA activities following FEMA guidance.

i. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the Department within the time period notated in the Timeline (Attachment F) except as otherwise authorized by either (1) written amendment of this Agreement or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's subproject(s). If funds are not required, the Subrecipient shall notify the Department Key Personnel.

j. All costs for equipment and supplies must be incurred, and received, before the Grant Agreement End Date.

k. Failure to submit timely, accurate, and complete reports and reimbursement requests as required by this Agreement (including, but not limited to, those reports in the Timeline [Attachment F]) will prohibit the Subrecipient from being reimbursed until such reports are submitted and the Department has had reasonable time to conduct its review.

l. Final reimbursement requests will not be approved for payment until the Subrecipient is current with all reporting requirements contained in this Agreement.

m. For SHSP and UASI funding, deviations from the Budget (Attachment E) are allowed as described below and will require an amendment if the identified threshold is exceeded:

   i. With Enduring Needs (EN) funding:

      A. If there is only one subproject, the Subrecipient is allowed to move funding between solution areas until cumulative transfers exceed ten percent (10%) of the subproject amount.

      B. If there are multiple subprojects, the Subrecipient is allowed to move funding between subprojects until cumulative transfers exceed ten percent (10%) of the subproject amount.

   ii. With National Priority Area (NPA) funding:

      A. If there is only one NPA project, the Subrecipient is allowed to transfer funding between solution areas until cumulative transfers exceed ten percent (10%) of the NPA project amount.

      B. If there are multiple projects within one NPA, the Subrecipient is allowed to transfer funding between projects until cumulative transfers exceed ten percent (10%) of the NPA amount.

      C. To ensure applicable federal requirements are met, funding may not be transferred between projects of different NPAs.

   iii. Funding cannot be transferred between EN subprojects and NPA projects.

n. For OPSG subrecipients, any deviations from the approved direct budget categories will require additional federal approvals and possibly a written amendment.

o. Subrecipients shall only use federal award funds under this Agreement to supplement existing funds and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

3. **REPORTING**

   a. With each reimbursement request, the Subrecipient shall report how the expenditures, for which reimbursement is sought, relate to the Work Plan (Attachments D-1, D-2) activities in the format provided by the Department.

   b. With the final reimbursement request, the Subrecipient shall submit a final report to Reimbursements@mil.wa.gov (in the format provided by the Department) describing all completed activities under this Agreement.

   c. The Subrecipient shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the *Department an Audit Certification/FFATA* Form. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.

   d. To document compliance with the National Incident Management System (NIMS), the Subrecipient shall complete the annual NIMS survey conducted by Washington Emergency Management Division (EMD).

4. **NIMS COMPLIANCE**

   a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain, and deliver the core capabilities needed to achieve a secure and resilient nation.

   b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive 8, to guide activities within the public and private sector and describes the planning, organizational activities, equipping, training, and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.

   c. In order to receive federal preparedness funding from the Department, the Subrecipient must ensure and maintain adoption and implementation of NIMS. See Agreement Attachment A, Article II section 3.d. for associated reporting requirements. The list of objectives used for progress and achievement reporting can be found at https://www.fema.gov/emergency-managers/nims/implementation-training.

5. **EQUIPMENT AND SUPPLY MANAGEMENT**

   a. The Subrecipient and any subrecipient to which the Subrecipient makes a subaward shall comply with 2 CFR 200.317 through 200.327, and all Washington State procurement statutes, when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies, to include, but not limited to:

      i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the Subrecipient, or a recognized subrecipient to which the Subrecipient has made a subaward, for which a contract, subrecipient grant agreement, or other means of legal transfer of ownership is in place.

      ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the Subrecipient's inventory system.

      iii. Inventory system records shall include:

         A. Description of the property

         B. Manufacturer's serial number, model number, or other identification number

         C. Funding source for the property, including the Federal Award Identification Number (FAIN) (Face Sheet, Box 11)

D. Assistance Listings Number (Face Sheet, Box 13)

E. Who holds the title

F. Acquisition date

G. Cost of the property and the percentage of federal participation in the cost

H. Location, use and condition of the property at the date the information was reported

I. Disposition data including the date of disposal and sale price of the property

iv. The Subrecipient shall take a physical inventory of the equipment, and supplies as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subrecipient to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

v. The Subrecipient shall be responsible for any and all operational and maintenance expenses and for the safe operation of the equipment and supplies including all questions of liability. The Subrecipient shall develop appropriate maintenance schedules and procedures to ensure the equipment, and supplies as applicable, are well-maintained and kept in good operating condition.

A. For SHSP and UASI subrecipients, the Subrecipient is responsible for routine upkeep (i.e. gasoline, tire replacement, routine oil changes, monthly inspections, etc.) and shall not use SHSP or UASI funding for this purpose.

vi. The Subrecipient shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the Department's Key Personnel.

vii. The Subrecipient must obtain and maintain all necessary certifications and licenses for the equipment.

viii. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement supplies or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Subrecipient must comply with the following procedures:

A. For Supplies: If there is a residual inventory of unused supplies exceeding ten thousand dollars ($10,000) in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, the Subrecipient must retain the supplies for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.

B. For Equipment:

1) Items with a current per-unit fair-market value of ten thousand dollars ($10,000) or less may be retained, sold, transferred, or otherwise disposed of with no further obligation to the federal awarding agency.

2) Items with a current per-unit fair-market value in excess of ten thousand dollars ($10,000) may be retained or sold. The Subrecipient shall compensate the federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

C. Notify Department Key Personnel to initiate the disposition process by the federal awarding agency.

ix. Records for equipment shall be retained by the Subrecipient for a period of six (6) years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six-year period, the records shall be retained by the Subrecipient until all litigation, claims, or audit findings involving the records have been resolved.

b. The Subrecipient shall comply with the Department's Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.

c. Allowable equipment categories for the grant program are listed on the Authorized Equipment List (AEL) located on the FEMA website at https://www.fema.gov/grants/guidance-tools/authorized-equipment-list. It is important that the Subrecipient and any subrecipient to which the Subrecipient makes a subaward regard the AEL as an authorized purchasing list identifying items allowed under the specific grant program; the AEL includes items that may not be categorized as equipment according to the federal, state, local, and tribal definitions of equipment. The Subrecipient is solely responsible for ensuring and documenting purchased items under this Agreement are authorized as allowed items by the AEL at time of purchase.

   If the item is not identified on the AEL as allowable under the grant program, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval **prior** to acquisition.

d. Equipment might require more than one waiver. The Subrecipient must contact the Department Key Personnel for assistance in identifying what waivers are needed for FEMA approval **prior** to acquisition.

e. Equipment purchases (those with a current per-unit fair market value in excess of ten thousand dollars ($10,000) must be identified and explained to the Department. Use, management, and disposition of such equipment is subject to requirements outlined in 2 CFR 200.313. Before making such purchases, the Subrecipient should analyze the cost benefits of purchasing versus leasing equipment, especially high-cost items and those subject to rapid technical advances.

f. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory state and DHS/FEMA adopted standards to be eligible for purchase using federal award funds.

g. If funding is allocated to support emergency communications activities, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants, located at https://www.cisa.gov/safecom/funding, including provisions on technical standards that ensure and enhance interoperable communications.

h. Effective August 13, 2020, FEMA recipients and subrecipients, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to:

   i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system

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

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

   This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018) and 2 CFR 200.216, 200.327, 200.471, and Appendix II to 2CFR200*. Recipients and subrecipients may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of the Manual and the NOFO.

Per subsections 889(f)(2)-(3) of the FY 2019 NDAA, and 2 CFR 200.216, covered telecommunications equipment or services means:

i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities)

ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities)

iii. Telecommunications or video surveillance services provided by such entities or using such equipment

iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country

i. For OPSG subrecipients, items budgeted as equipment in an approved Operations Order should be marked prominently with “Purchased with DHS funds for Operation Stonegarden Use” when practicable.

j. The Subrecipient must pass through equipment and supply management requirements that meet or exceed the requirements outlined above to any subrecipient to which the Subrecipient makes a subaward of federal award funds under this Agreement.

6. ENVIRONMENTAL AND HISTORICAL PRESERVATION

a. The Subrecipient shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) Program. EHP program information can be found at https://www.fema.gov/grants/guidance-tools/environmental-historic all of which are incorporated in and made a part of this Agreement.

b. Projects that have historical impacts **or** the potential to impact the natural or built environment, **including, but not limited to**, construction of communication towers; modification or renovation of existing buildings, structures and facilities; installation of sonar system; or new construction, including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to project initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed also require a DHS/FEMA EHP review before project initiation.

c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.

d. The Subrecipient agrees that, to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed and FEMA approval must be received by the Subrecipient before any work is started** for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process and receipt of approval by the Subrecipient will not be reimbursed.

7. PROCUREMENT

The Subrecipient shall comply with all procurement requirements of 2 CFR 200.317 through 200.327 and as specified in the General Terms and Conditions (Attachment B, A.10).

a. For all contracts expected to exceed the simplified acquisition threshold, per 2 CFR 200.1, the Subrecipient must notify the Department. The Department may request pre-procurement documents, such as request for proposals, invitations for bids and independent cost estimates. This requirement must be passed on to any subrecipient to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for requesting and reviewing pre-procurement documents.

b. For all sole source contracts expected to exceed the micro-purchase threshold per 2 CFR 200.1, the Subrecipient must submit justification to the Department for review and approval. This requirement must be passed on to any subrecipient to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for reviewing and approving sole source justifications to any subrecipient to which Subrecipient makes any award.

c. The Subrecipient as well as its contractors and subcontractors must comply with the Build America, Buy America Act (BABAA), which was enacted as a part of the Infrastructure Investment and Jobs Act §§ 70901-70297, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers. BABAA requires any infrastructure project receiving federal funding must ensure:

   i. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from initial melting stage through the application of coatings, occurred in the United States.

   ii. All manufactured products must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all minimum amount of domestic content of manufactured product, unless subject to another standard.

   iii. All construction materials are manufactured in the United States. This means that all manufacturing processes for construction material occurred in the United States.

   Additionally, applicable infrastructure projects are subject to domestic preference requirements. A domestic preference does not apply to non-infrastructure spending under an award that also includes a covered project. A domestic preference applies to an entire infrastructure project, even if it is funded by both federal and non-federal funds under one or more awards.

   i. Domestic preferences under BABAA only apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a domestic preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure.

   ii. Infrastructure, for the purposes of BABAA, includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways and bridges; public transportation; dams, ports, harbors and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

   iii. The Subrecipient's contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file a required certification to the Subrecipient with each bid or offer for an infrastructure project unless a domestic preference requirement is waived by FEMA. Contractors and subcontractors must certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the Subrecipient who will forward them to the Department who, in turn, will forward the disclosures to FEMA. The Build America, Buy America Act Self-Certification form is included herein as Attachment G.

If the Subrecipient is interested in applying for a waiver, the Subrecipient should contact the Department Key Personnel to determine the requirements. All waiver requests must include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States and a certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers.

8. SUBRECIPIENT MONITORING

a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities will be to ensure that subrecipients receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.

b. To document compliance with 2 CFR Part 200 Subpart F requirements, the Subrecipient shall complete and return to the Department an *Audit Certification/FFATA Form*. Reporting requirements are referenced in section 3.d.

c. Monitoring activities may include, but are not limited to:

   i. Review of financial and performance reports

   ii. Monitoring and documenting the completion of Agreement deliverables

   iii. Documentation of phone calls, meetings (e.g., agendas, sign-in sheets, meeting minutes), e-mails and correspondence

   iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement Work Plan (Attachments D-1, D-2), Budget (Attachment E), and federal requirements

   v. Observation and documentation of Agreement-related activities, such as exercises, training, events, and equipment demonstrations

   vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables

d. The Subrecipient is required to meet or exceed the monitoring activities, as outlined above, for any subrecipient to which the Subrecipient makes a subaward as a pass-through entity under this Agreement.

e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan.

9. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

a. The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. FEMA Policy FP-256-23-001 (https://www.fema.gov/sites/default/files/documents/fema_policy-language-access.pdf) further stresses this requirement applies to anyone awarded FEMA funding. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Orig Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services, selecting language services, and elements of an effective plan on language assistance for LEP persons.

b. Subrecipients are encouraged to perform and document their analysis of the most appropriate language assistance services necessary to ensure a LEP individual has meaningful access to the Subrecipient's programs and activities. The analysis should consider:

   i. The number or proportion of LEP individuals eligible to be served or likely encountered by the program

   ii. The frequency with which LEP individuals come in contact with the program

   iii. The nature and importance of the program, activity, or service provided by the program to people's lives

   iv. The resources available to the program and costs

B. HSGP SPECIFIC REQUIREMENTS

The objectives of the HSGP are to (1) build and sustain core capabilities, including Law Enforcement and Terrorism Prevention Activities and the National Priority Areas; (2) address capability gaps identified in the Threat and Hazard Identification and Risk Assessment (THIRA) and Stakeholder Preparedness Review (SPR) process; and (3) implement a comprehensive and coordinated approach to address enduring security needs of communities that includes planning, training and awareness campaigns, equipment and capital projects, and exercises.

1. The Subrecipient must use HSGP funds only to perform tasks as described in the Work Plan (Attachments D-1, D-2), as approved by the Department, and in compliance with this Agreement.

   a. SHSP-funded projects must assist state, local, tribal, and territorial efforts to build, enhance, and sustain the capabilities needed to prevent, prepare for, protect against, and respond to acts of terrorism. All tasks must have a nexus to terrorism and address capability gaps identified through the Threat Hazard Identification and Risk Assessment (THIRA)/Stakeholder Preparedness Review (SPR) process.

   b. UASI-funded projects must enhance the security and resilience of high-risk urban areas to build, sustain, and improve the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism. All tasks must have a nexus to terrorism and address capability gaps identified through the THIRA/SPR process.

   c. OPSG-funded projects must support enhanced cooperation and coordination among Customs and Border Protection, United States Border Patrol, and federal, state, local, tribal, and territorial law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. State, local, tribal, and territorial law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority by participating in OPSG.

   d. State agencies, including law enforcement, must comply with RCW 43.17.425 and may not use agency funds (including this grant), facilities, property, equipment, or personnel, to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin, except as provided in RCW 43.17.425 (3).

2. The Budget (Attachment E) may include the following caps and thresholds:

   a. If funds are allotted for Management and Administration (M&A), such expenditures must be related to administration of the grant. The maximum percentage of the Grant Agreement Amount that may be used for M&A costs when allocated under this Agreement shall not exceed five percent (5%) but may be less.

b. At least thirty percent (35%) of the combined HSGP award allocated under SHSP and UASI must be dedicated to law enforcement terrorism prevention activities (LETPA). To meet this requirement, the Subrecipient has agreed, at a minimum, to meet the LETPA percentage indicated in the Budget. **If the Subrecipient anticipates spending less than the indicated amount, a budget amendment is required.**

c. The maximum percentage of the Grant Agreement Amount that may be used for personnel expenses under this Agreement is identified in the Budget. If the Subrecipient anticipates spending more on personnel costs, **an amendment is required**. Additional approval steps may also be required before the personnel percentage can be increased.

3. If funding is allocated for intelligence analysts, analytical personnel must demonstrate qualifications that meet or exceed competencies identified in the Common Competencies for state, local, and tribal intelligence analysts, which outlines the minimum categories of training needed for intelligence analysts. All training to ensure baseline proficiency in intelligence analysis and production must be completed within six (6) months of hiring unless the analyst has previously served as an intelligence analyst for a minimum of two (2) years. Documentation of this requirement must be accessible to the Department Key Personnel as applicable.

4. If funding is allocated to non-DHS FEMA training, the Subrecipient **must request prior** written approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. Pursuant to DHS/FEMA Grant Programs Directorate Information Bulletin No. 432, Review and Approval Requirements for Training Courses Funded Through Preparedness Grants, https://www.fema.gov/sites/default/files/2020-04/Training_Course_Review_and_Approval_IB_Final_7_19_18.pdf, the training must fall within the FEMA mission scope and be in alignment with the Subrecipient's Emergency Operations Plan. This requirement only applies to training courses and does not include attendance at conferences. Furthermore, additional federal approvals are required for courses that relate to Countering Violent Extremism.

5. Except for an elevated National Terrorism Advisory System alert, **prior** written approval is required before SHSP and UASI funds may be used for operational overtime. Requests must be submitted to the Department Key Personnel in advance of the expenditure to ensure all additional approval steps can be met.

6. To gather data for the required FEMA deliverables (i.e., SPR, THIRA), EMD is continuing the pilot of the three-year County Emergency Preparedness Assessment (CEPA) process with workshops, occurring in a third of the 39 counties each calendar year 2024-2026. All **SHSP** Subrecipients that have not completed a CEPA workshop in calendar year 2024 or 2025 must participate in and complete a CEPA workshop located in their county in calendar year 2026 to receive SHSP funding.

C. DHS TERMS AND CONDITIONS

As a subrecipient of 25HSGP funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 25HSGP Award Letter and its incorporated documents for the Grant, which are incorporated in and made a part of this Agreement as Attachment C.

Washington Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants

A.1 DEFINITIONS

As used throughout this Agreement, the terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

a. "**Agreement**" means this Grant Agreement.

b. "**Department**" means the Washington Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is the pass-through entity making a subaward to a Subrecipient under this Agreement.

c. "**Monitoring Activities**" means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.

d. "**Subrecipient**" when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the Department. However, the definition of "Subrecipient" is the same as in 2 CFR 200.1 for all other purposes.

A.2 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. The Subrecipient shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.3 AMENDMENTS AND MODIFICATIONS

The Subrecipient or the Department may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the Department and the Subrecipient. No other understandings or agreements, written or oral, shall be binding on the parties.

The Agreement performance period shall only be extended by (1) written notification of DHS/FEMA approval of the Award performance period, followed up with a mutually agreed written amendment, or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's project(s).

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

Except as provided herein, the Subrecipient must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication. If the ADA does not apply to the Subrecipient because the Subrecipient is a federal recognized Indian Tribe, then the acceptance by the Tribe of, or acquiescence to, these General Terms and Conditions does not change or alter its inapplicability to the Indian Tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

A.5 ASSURANCES

The Department and Subrecipient agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

A.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The Subrecipient shall complete, sign, and return a *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion* form located at http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms. Any such form completed by the Subrecipient for this Agreement shall be incorporated into this Agreement by reference.

Further, the Subrecipient agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Subrecipient certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed twenty five thousand dollars ($25,000), and subawards to subrecipients for any amount. With respect to covered transactions, the Subrecipient may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (https://sam.gov/SAM/) maintained by the federal government. The Subrecipient also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "*Debarred Contractor List*" (https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' *"Vendors Not Allowed to Bid (Debarment)" list* (Vendors Not Allowed to Bid (Debarment) | Department of Enterprise Services (DES)).

A.7 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subrecipient hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subrecipient 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) that 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 Agreement, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "*Disclosure Form to Report Lobbying*," in accordance with its instructions; (3) and that, as applicable, the Subrecipient will 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 and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

A.8 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Subrecipient and all its contractors and subrecipients shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the Subrecipient, its contractors or subrecipients, the Department may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The Subrecipient is responsible for all costs or liability arising from its failure, and that of its contractors and subrecipients, to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.9 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Subrecipient or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the Subrecipient who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The Subrecipient shall incorporate, or cause to incorporate, in all such contracts or subawards, a provision prohibiting such interest pursuant to this provision.

A.10 CONTRACTING & PROCUREMENT

a. The Subrecipient shall use a competitive procurement process in the procurement and award of any contracts with contractors or subcontractors that are entered into under the original agreement award. The procurement process followed shall be in accordance with 2 CFR Part 200.318, General procurement standards, through 200.327, Contract provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the Subrecipient under this Agreement must include the following provisions, as applicable:

1) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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.

2) All contracts in excess of ten thousand dollars ($10,000) must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.

3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "*Equal Employment Opportunity*" (30 FR 12319, 12935, 3 CFR 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 CFR part 60, "*Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor*."

4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of two thousand dollars ($2,000) awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "*Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction*"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of one hundred thousand dollars ($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 (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of 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 in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "*Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*," and any implementing regulations issued by the awarding agency.

7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of one hundred fifty thousand dollars ($150,000) must contain a provision that requires the non-federal award 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 the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "*Debarment and Suspension*." SAM Exclusions 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.

9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding one hundred thousand dollars ($100,000) must 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 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 non-federal award.

10) Procurement of recovered materials – As required by 2 CFR 200.323, 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. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 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 ten thousand dollars ($10,000) or the value of the quantity acquired during the preceding fiscal year exceeded ten thousand dollars ($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.

11) Notice of federal awarding agency requirements and regulations pertaining to reporting.
12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
13) Access by the Department, the Subrecipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
14) Retention of all required records for six years after the Subrecipient has made final payments and all other pending matters are closed.
15) 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 (Pub. L. 94–163, 89 Stat. 871).
16) Pursuant to Executive Order 13858 "*Strengthening Buy-American Preferences for Infrastructure Projects*," and as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, as required in 2 CFR Part 200.322, in every contract, subcontract, purchase order, or sub-award that is chargeable against federal financial assistance awards.
17) Per 2 C.F.R. § 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by *section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018)*.

b. The Department reserves the right to review the Subrecipient's procurement plans and documents and require the Subrecipient to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.317 through 200.327. The Subrecipient must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Subrecipient and Department to make a determination on eligibility of project costs.

c. All contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution board to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The board shall consist of a representative appointed by the Department, a representative appointed by the Subrecipient, and a third party mutually agreed upon by both parties. The determination of the dispute resolution board shall be final and binding on the parties hereto. Each party shall bear the cost for its member of the dispute resolution board and its attorney fees and costs and share equally the cost of the third board member.

A.13 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the Subrecipient, its successors or assigns, will protect, save and hold harmless the Department, the state of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subrecipient, its subcontractors, subrecipients, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the Subrecipient further agrees to defend the Department and the state of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Subrecipient, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subrecipient, or the Subrecipient's agents or employees.

Insofar as the funding source, FEMA, is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.14 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Subrecipient or Alternate for the Subrecipient, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties' Authorized Signature representatives, except as provided for time extensions in Article A.3.

Further, only the Authorized Signature representative or Alternate for the Subrecipient shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.15 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the work plan and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Subrecipient an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.16 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient.

A.17 NONDISCRIMINATION

During the performance of this agreement, the Subrecipient shall comply with all federal and state nondiscrimination statutes and regulations. These requirements include, but are not limited to:

a. Nondiscrimination in Employment: The Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, Vietnam era or disabled veteran status, or the presence of any sensory, mental, or physical handicap. This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
b. The Subrecipient shall take action to ensure that employees are employed and treated during employment without discrimination because of their race, color, sex, sexual orientation religion, national origin, creed, marital status, age, Vietnam era or disabled veteran status, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment selection for training, including apprenticeships and volunteers.

A.18 NOTICES

The Subrecipient shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and regulations and shall maintain a record of this compliance.

A.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The Subrecipient represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subrecipient's performance under this Agreement. To the extent allowed by law, the Subrecipient further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including, but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Subrecipient to so comply.

A.20 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this subaward of funds does not and will not acquire any ownership interest or title to such property of the Subrecipient. The Subrecipient shall assume all liabilities and responsibilities arising from the ownership and operation of the project and agrees to defend, indemnify, and hold the Department, the state of Washington, and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.21 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.22 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.23 PUBLICITY

The Subrecipient agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Agreement wherein the Department’s name is mentioned, or language used from which the connection of the Department’s name may, in the Department’s judgment, be inferred or implied. The Subrecipient agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Subrecipient may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by the Assistance Listings Number (formerly CFDA Number), and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.24 RECAPTURE PROVISION

In the event the Subrecipient fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the Subrecipient of funds under this recapture provision shall occur within 30 days of demand. In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs and expenses thereof, including attorney fees from the Subrecipient.

A.25 RECORDS

a. The Subrecipient agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Subrecipient's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").

b. The Subrecipient's records related to this Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Subrecipient with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.

c. The records shall be made available by the Subrecipient for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subrecipient's normal working day.

d. The Subrecipient shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Subrecipient with the project/statement of work/work plan (project) by providing federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the Subrecipient. The Department undertakes no responsibility to the Subrecipient, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subrecipient, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subrecipient shall ensure that all applicable federal, state, and local permits and clearances are obtained, including, but not limited to, FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations, and executive orders.

The Subrecipient shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subrecipient in connection with the project. The Subrecipient shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including, but not limited to, cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.27 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.28 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

The Subrecipient shall comply with and include the following audit requirements in any subawards.

Subrecipients of a federal award, that expend one million dollars ($1,000,000) or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Subrecipients that spend less than one million dollars ($1,000,000) a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term “subrecipient” means an entity that receives a subaward from a pass-through entity to carry out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor’s Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200.425.

The Subrecipient shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records. The Subrecipient is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Subrecipient must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Subrecipient all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the Subrecipient must send a full copy of the audit and its Corrective Action Plan to the Department at the following address no later than nine (9) months after the end of the Subrecipient’s fiscal year(s):

Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032

OR

Contracts.Office@mil.wa.gov

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient’s failure to comply with said audit requirements may result in one or more of the following actions in the Department’s sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.29 SUBRECIPIENT NOT EMPLOYEE

The Subrecipient, and/or employees or agents performing under this Agreement, are not employees or agents of the Department in any manner whatsoever. The Subrecipient will not be presented as nor claim to be an officer or employee of the Department or of the state of Washington by reason hereof, nor will the Subrecipient make any claim, demand, or application to or for any right, privilege or benefit applicable to an officer or employee of the Department or of the state of Washington, including, but not limited to, Workers’ Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW; OFM Reg. 4.3.1.1.8.

It is understood that if the Subrecipient is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right.

If the Subrecipient is an individual currently employed by a Washington State agency, the Department shall obtain proper approval from the employing agency or institution before entering into this contract. A statement of "no conflict of interest" shall be submitted to the Department.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the Subrecipient shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Subrecipient or its staff required by statute or regulation that are applicable to Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the Subrecipient may terminate this Agreement by providing written notice of such termination to the Department Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the Department, in its sole discretion and in the best interests of the state of Washington, may terminate this Agreement in whole or in part ten (10) business days after emailing notice to the Subrecipient. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR LOSS OF FUNDING

The Department may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement. The Department will email the Subrecipient ten (10) business days prior to termination.

A.33 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Subrecipient has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Subrecipient unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the Department has the right to immediately suspend or terminate this Agreement in whole or in part.

The Department may notify the Subrecipient in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Subrecipient an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Subrecipient's liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Subrecipient an opportunity to cure, the Department shall notify the Subrecipient in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subrecipient, if allowed, or pending a decision by the Department to terminate the Agreement in whole or in part.

In the event of termination, the Subrecipient shall be liable for all damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time.

The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Subrecipient: (1) was not in default or material breach, or (2) failure to perform was outside of the Subrecipient's control, fault or negligence, the termination shall be deemed to be a termination for convenience.

A.34 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Agreement, the Subrecipient shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the Department may require the Subrecipient to deliver to the Department any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Subrecipient as an agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Agreement termination, the amount agreed upon by the Subrecipient and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Subrecipient for termination. The Department may withhold from any amounts due the Subrecipient such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Subrecipient shall:

a. Stop work under the Agreement on the date, and to the extent specified, in the notice

b. Place no further orders or contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated

c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Subrecipient under the orders and contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts

d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause

e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Agreement had been completed, would have been required to be furnished to the Department

f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements

g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Agreement which is in the possession of the Subrecipient and in which the Department has or may acquire an interest

A.35 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). To the extent possible, the Subrecipient will solicit and encourage minority-owned and women-owned business enterprises who are certified by the OMWBE under the state of Washington certification program to apply and compete for work under this contract. Voluntary numerical MWBE participation goals have been established and are indicated herein: Minority Business Enterprises: (MBE's): 10% and Woman's Business Enterprises (WBE's): 6%.

A.36 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Except for as provided herein, the exclusive venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington, and the Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington. Provided, that if the Subrecipient is a federally recognized Indian Tribe, the parties agree that, in the event either party to this Agreement commences any suit relating to or arising from the Agreement, the United States District Court for the Western District of the State of Washington shall have the sole and exclusive jurisdiction over such proceeding. If the court lacks federal subject matter jurisdiction, then the Tribe agrees to waive its sovereign immunity from suit for the limited purpose of permitting the State to enforce the terms of this Agreement in the Superior Court of Washington under Washington law, and venue for such suit shall be the Superior Court of Thurston County, Washington. This limited waiver of sovereign immunity is solely for the benefit of the State. This limited waiver of sovereign immunity shall not be for, nor shall it be construed as for, the benefit of any other person or entity, and the Tribe does not waive its immunity with respect to any action brought by, or on behalf of, any other entity or person.

A.37 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

25HSGP Award Letter
EMW-2025-SS-05030

Amendment Memo

U.S. Department of Homeland Security
Washington, D.C. 20472

Effective date: 05/26/2026

FEMA has made an amendment to your award: EMW-2025-SS-05030. The change to your grant was reviewed and is hereby approved as specified below. All other terms and conditions of the grant remain unchanged.

Terms and conditions amendment(s)

FEMA has reviewed the terms and conditions of your award.

The following terms and conditions have been added to your award:

Article 75 National Priority Area Program Hold (30%)

Consistent with the FY 2025 HSGP NOFO, the recipient is prohibited from drawing down funding for projects needed to meet the 30% minimum spending requirements for National Priority Areas under this award until each project is reviewed by FEMA/GPD to determine effectiveness. Per IB 550, the 45-day pass through period will not begin for these funds until this hold is lifted.

Article 76 Law Enforcement Terrorism Prevention Activities Program Hold (35%)

Consistent with the FY 2025 HSGP NOFO, the recipient is prohibited from drawing down funding for projects needed to meet the 35% minimum allocation requirements for Law Enforcement Terrorism Prevention Program Activities (LETPA) under this award until each project is reviewed by FEMA/GPD to determine alignment with LETPA requirements. Per IB 550, the 45-day pass through period will not begin for these funds until this hold is lifted.

The following terms and conditions have been removed from your award:

Article 57 Funding Hold: Additional Information Required

FEMA has placed a funding hold on this award, and $19,631,821 is on hold in the FEMA financial systems. The recipient is prohibited from obligating, expending, or drawing down the funds associated with the following Homeland Security Grant Program subprogram(s)/investment(s). To release the funding hold, the recipient must provide a detailed cost breakdown and justification for the investments/projects listed above. FEMA will rescind the funding hold upon its review and approval of the detailed cost breakdown and justification. If you have questions about this funding hold, please contact the DHS/FEMA Headquarters Preparedness Officer.

Your amended award package is included below. The amended award package incorporates changes approved in this amendment as well as any previously approved amendments.

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Effective date: 05/26/2026

FEMA

Gail Cram
MILITARY DEPARTMENT, WASHINGTON STATE
BUILDING 1 MILITIA DR STATE FINANCIAL SERVICES
CAMP MURRAY, WA 98430

EMW-2025-SS-05030

Dear Gail Cram,

Congratulations on behalf of the Department of Homeland Security, your application submitted for the Fiscal Year (FY) 2025 Homeland Security Grant Program, has been approved in the amount of $19,631,821.00 in Federal funding. This award of federal assistance is executed as a Grant.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Award Summary - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- Fiscal Year (FY) 2025 Homeland Security Grant Program (HSGP) Notice of Funding Opportunity
- The Preparedness Grant Manual (PGM)

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

David Gudinas
Deputy Assistant Administrator (Acting)
Grant Programs Directorate | Resilience

Award Summary

Program: Fiscal Year 2025 Homeland Security Grant Program
Recipient: MILITARY DEPARTMENT, WASHINGTON STATE
UEI-EFT: D2EJRGZ2PLG8
Award number: EMW-2025-SS-05030

Summary description of award

The Fiscal Year (FY) 2025 Homeland Security Grant Program (HSGP) is one of three grant programs that constitute the DHS/FEMA focus on enhancing the ability of state, local, tribal, and territorial governments, as well as nonprofits, to prevent, protect against, respond to, and recover from terrorist attacks. These grant programs are part of a comprehensive set of measures authorized by Congress and implemented by DHS to help strengthen the Nation's communities against potential terrorist attacks. Among the five basic homeland security missions noted in the DHS Strategic Plan, the HSGP supports the goal to Strengthen National Preparedness and Resilience.

Amount awarded table

The amount of the award is detailed in the attached Obligating Document for Award.

The following are the budgeted estimates for object classes for this amended award (including Federal share plus your cost share, if applicable):

Object Class	Total
Personnel	$1,643,728.00
Fringe benefits	$290,825.00
Travel	$36,702.00
Equipment	$5,693,365.00
Supplies	$16,675.00
Contractual	$1,024,796.00
Construction	$0.00
Other	$10,772,782.00
Indirect charges	$152,948.00
Federal	$19,631,821.00
Non-federal	$0.00
Total	$19,631,821.00
Program Income	$0.00

Approved scope of work

FEMA has approved the below scope of work. Differences between the approved scope of work in this amendment and the previously approved scope of work are justified below. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2025 HSGP NOFO.

*// due to new system inclusion of information with no context, pages **5-42** not included – available on request //*

Agreement Articles

Program: Fiscal Year 2025 Homeland Security Grant Program
Recipient: MILITARY DEPARTMENT, WASHINGTON STATE
UEI-EFT: D2EJRGZ2PLG8
Award number: EMW-2025-SS-05030

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Article 75	**National Priority Area Program Hold (30%)**
Article 76	**Law Enforcement Terrorism Prevention Activities Program Hold (35%)**

Article 1	**Assurance, Administrative Requirements, Cost Principles, Representations, and Certifications** I. Recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non- Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances, as instructed.
Article 2	**General Acknowledgements and Assurances** Recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in effect as of the federal award date and located in Title 2, Code of Federal Regulations, Part 200 and adopted by DHS at 2 C.F.R. § 3002.10. All recipients and subrecipients must acknowledge and agree to provide DHS access to records, accounts, documents, information, facilities, and staff pursuant to 2 C.F.R. § 200.337. I. Recipients must cooperate with any DHS compliance reviews or compliance investigations. II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal award and permit access to facilities and personnel. III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements required by law, federal regulation, Notice of Funding Opportunity, federal award specific terms and conditions, and/or DHS Component program guidance. Organization costs related to data and evaluation are allowable. The definition of data and evaluation costs is in 2 C.F.R. § 200.455(c), the full text of which is incorporated by reference. V. Recipients must complete DHS Form 3095 within 60 days of receipt of the Notice of Award for the first award under which this term applies. For further instructions and to access the form, please visit: https://www.dhs.gov/civil-rightsresources-recipients-dhs-financial-assistance.
Article 3	**Acknowledgement of Federal Funding from DHS** Recipients must acknowledge their use of federal award funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal award funds.
Article 4	**Activities Conducted Abroad** Recipients must coordinate with appropriate government authorities when performing project activities outside the United States obtain all appropriate licenses, permits, or approvals.
Article 5	**Age Discrimination Act of 1975** Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (codified as amended at Title 42, U.S. Code § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.
Article 6	**Americans with Disabilities Act of 1990** Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101– 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.
Article 7	**Best Practices for Collection and Use of Personally Identifiable Information** (1) Recipients who collect personally identifiable information (PII) as part of carrying out the scope of work under a federal award are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. (2) Definition. DHS defines "PII" as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

Article 8	**CHIPS and Science Act of 2022, Public Law 117-167 CHIPS** (1) Recipients of DHS research and development (R&D) awards must report to the DHS Component research program office any finding or determination of sex based and sexual harassment and/or an administrative or disciplinary action taken against principal investigators or co-investigators to be completed by an authorized organizational representative (AOR) at the recipient institution. (2) Notification. An AOR must disclose the following information to agencies within 10 days of the date/the finding is made, or 10 days from when a recipient imposes an administrative action on the reported individual, whichever is sooner. Reports should include: (a) Award number, (b) Name of PI or Co-PI being reported, (c) Awardee name, (d) Awardee address, (e) AOR name, title, phone, and email address, (f) Indication of the report type: (i) Finding or determination has been made that the reported individual violated awardee policies or codes of conduct, statutes, or regulations related to sexual harassment, sexual assault, or other forms of harassment, including the date that the finding was made. (ii) Imposition of an administrative or disciplinary action by the recipient on the reporting individual related to a finding/determination or an investigation of an alleged violation of recipient policy or codes of conduct, statutes, or regulations, or other forms of harassment. (iii) The date and nature of the administrative/disciplinary action, including a basic explanation or description of the event, which should not disclose personally identifiable information regarding any complaints or individuals involved. Any description provided must be consistent with the Family Educational Rights in Privacy Act. (3) Definitions. (a) An “authorized organizational representative (AOR)” is an administrative official who, on behalf of the proposing institution, is empowered to make certifications and representations and can commit the institution to the conduct of a project that an agency is being asked to support as well as adhere to various agency policies and award requirements. (b) “Principal investigators and co-principal investigators” are award personnel supported by a grant, cooperative agreement, or contract under Federal law. (c) A “reported individual” refers to recipient personnel who have been reported to a federal agency for potential sexual harassment violations. (d) “Sex based harassment” means a form of sex discrimination and includes harassment based on sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. (e) “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment, whether such activity is carried out by a supervisor or by a co-worker, volunteer, or contractor.
Article 9	**Civil Rights Act of 1964 – Title VI** Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21. Recipients of a federal award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA’s implementing regulations at 44 C.F.R. Part 7.
Article 10	**Civil Rights Act of 1968** Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90284 (codified as amended at 42 U.S.C. § 3601 et seq.) which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection. therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units— i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article 11	**Communication and Cooperation with the Department of Homeland Security and Immigration Officials** (1) All recipients and other recipients of funds under this award must agree that they will comply with the following requirements related to coordination and cooperation with the Department of Homeland Security and immigration officials: (a) They must comply with the requirements of 8 U.S.C. §§ 1373 and 1644. These statutes prohibit restrictions on information sharing by state and local government entities with DHS regarding the citizenship or immigration status, lawful or unlawful, of any individual. Additionally, 8 U.S.C. § 1373 prohibits any person or agency from prohibiting, or in any way restricting, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status of any individual: 1) sending such information to, or requesting or receiving such information from, Federal immigration officials; 2) maintaining such information; or 3) exchanging such information with any other Federal, State, or local government entity; (b) They must comply with other relevant laws related to immigration, including prohibitions on encouraging or inducing an alien to come to, enter, or reside in the United States in violation of law, 8 U.S.C. § 1324(a)(1)(A)(iv), prohibitions on transporting or moving illegal aliens, 8 U.S.C. § 1324(a)(1)(A)(ii), prohibitions on harboring, concealing, or shielding from detection illegal aliens, 8 U.S.C. § 1324(a)(1)(A)(iii), and any applicable conspiracy, aiding or abetting, or attempt liability regarding these statutes; (c) That they will honor requests for cooperation, such as participation in joint operations, sharing of information, or requests for short term detention of an alien pursuant to a valid detainer. A jurisdiction does not fail to comply with this requirement merely because it lacks the necessary resources to assist in a particular instance; (d) That they will provide access to detainees, such as when an immigration officer seeks to interview a person who might be a removable alien; and (e) That they will not leak or otherwise publicize the existence of an immigration enforcement operation. (2) The recipient must certify under penalty of perjury pursuant to 28 U.S.C. § 1746 and using a form that is acceptable to DHS, that it will comply with the requirements of this term. Additionally, the recipient agrees that it will require any subrecipients or contractors to certify in the same manner that they will comply with this term prior to providing them with any funding under this award. (3) The recipient agrees that compliance with this term is material to the Government's decision to make or continue with this award and that the Department of homeland Security may terminate this grant, or take any other allowable enforcement action, if the recipient fails to comply with this term.
Article 12	**Copyright** Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 to any work first produced under federal awards and also include an acknowledgement that the work was produced under a federal award (including the federal award number and federal awarding agency). As detailed in 2 C.F.R. § 200.315, a federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and to authorize others to do so.
Article 13	**Debarment and Suspension** Recipients must comply with the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689 set forth at 2 C.F.R. Part 180 as implemented by DHS at 2 C.F.R. Part 3000. These regulations prohibit recipients from entering into covered transactions (such as subawards and contracts) with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
Article 14	**Drug-Free Workplace Regulations** Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government- wide implementation (2 C.F.R. Part 182) of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).
Article 15	**Duplicative Costs** Recipients are prohibited from charging any cost to this federal award that will be included as a cost or used to meet cost sharing requirements of any other federal award in either the current or a prior budget period. See 2 C.F.R. § 200.403(f). However, recipients may shift costs that are allowable under two or more federal awards where otherwise permitted by federal statutes, regulations, or the federal award terms and conditions.

Article 16	**Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX** Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17. Recipients of a federal award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA's implementing regulations at 44 C.F.R. Part 19.
Article 17	**Energy Policy and Conservation Act** Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
Article 18	**Equal Treatment of Faith-Based Organizations** It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.
Article 19	**Anti-Discrimination** Recipients must comply with all applicable Federal anti-discrimination laws material to the government's payment decisions for purposes of 31 U.S.C. § 372(b)(4). (1) Definitions. As used in this clause – (a) DEI means "diversity, equity, and inclusion." (b) DEIA means "diversity, equity, inclusion, and accessibility." (c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025. (d) Federal anti-discrimination laws mean Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin. (e) Illegal immigrant means any alien, as defined in 8 U.S.C. § 1101(a)(3), who has no lawful immigration status in the United States.(2) Grant award certification. (a) By accepting the grant award, recipients are certifying that: (i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws; and (ii) They do not engage in and will not during the term of this award engage in, a discriminatory prohibited boycott. (iii) They do not, and will not during the term of this award, operate any program that benefits illegal immigrants or incentivizes illegal immigration. (3) DHS reserves the right to suspend payments in whole or in part and/or terminate financial assistance awards if the Secretary of Homeland Security or her designee determines that the recipient has violated any provision of subsection (2). (4) Upon suspension or termination under subsection (3), all funds received by the recipient shall be deemed to be in excess of the amount that the recipient is determined to be entitled to under the Federal award for purposes of 2 C.F.R. § 200.346. As such, all amounts received will constitute a debt to the Federal Government that may be pursued to the maximum extent permitted by law.
Article 20	**False Claims Act and Program Fraud Civil Remedies** Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§ 3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)
Article 21	**Federal Debt Status** All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.
Article 22	**Federal Leadership on Reducing Text Messaging while Driving** Recipients are encouraged to adopt and enforce policies that ban text messaging while driving recipient-owned, recipient-rented, or privately owned vehicles when on official government business or when performing any work for or on behalf of the Federal Government. Recipients are also encouraged to conduct the initiatives of the type described in Section 3(a) of Executive Order 13513.

Article 23	**Fly America Act of 1974** Recipients must comply with Preference for U.S. Flag Air Carriers (a list of certified air carriers can be found at: Certificated Air Carriers List | US Department of Transportation, https://www.transportation.gov/policy/aviation-policy/certificated-aircarriers-list)for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.
Article 24	**Hotel and Motel Fire Safety Act of 1990** Recipients must ensure that all conference, meeting, convention, or training space funded entirely or in part by federal award funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a.
Article 25	**John S. McCain National Defense Authorization Act of Fiscal Year 2019** Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. The statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.
Article 26	**Limited English Proficiency (Civil Rights Act of 1964, Title VI)** Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: https://www.dhs.gov/guidance-published-help-department-supported-organizationsprovide-meaningful-access-people-limited and additional resources on http://www.lep.gov.
Article 27	**Lobbying Prohibitions** Recipients must comply with 31 U.S.C. § 1352 and 6 C.F.R. Part 9, which provide that none of the funds provided under a federal award may be expended by the recipient to pay any person to influence, or attempt 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 any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification. Per 6 C.F.R. Part 9, recipients must file a lobbying certification form as described in Appendix A to 6 C.F.R. Part 9 or available on Grants.gov as the Grants.gov Lobbying Form and file a lobbying disclosure form as described in Appendix B to 6 C.F.R. Part 9 or available on Grants.gov as the Disclosure of Lobbying Activities (SF-LLL).
Article 28	**National Environmental Policy Act** Recipients must comply with the requirements of the National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq.) (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article 29	**National Security Presidential Memorandum-33 (NSPM-33) and provisions of the CHIPS and Science Act of 2022, Pub. L. 117-167, Section 10254** (1) Recipient research institutions ("covered institutions") must comply with the requirements in NSPM-33 and provisions of Pub. L.117-167, Section 10254 (codified at 42 U.S.C. § 18951) certifying that the institution has established and operates a research security program that includes elements relating to: (a) cybersecurity; (b) foreign travel security; (c) research security training; and (d) export control training, as appropriate. (2) Definition. "Covered institutions" means recipient research institutions receiving federal Research and Development (R&D) science and engineering support "in excess of $50 million per year."
Article 30	**Non-Supplanting Requirement** Recipients of federal awards under programs that prohibit supplanting by law must ensure that federal funds supplement but do not supplant non-federal funds that, in the absence of such federal funds, would otherwise have been made available for the same purpose.
Article 31	**Notice of Funding Opportunity Requirements** All the instructions, guidance, limitations, scope of work, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this federal award are incorporated by reference. All recipients must comply with any such requirements set forth in the NOFO. If a condition of the NOFO is inconsistent with these terms and conditions and any such terms of the federal award, the condition in the NOFO shall be invalid to the extent of the inconsistency. The remainder of that condition and all other conditions set forth in the NOFO shall remain in effect.
Article 32	**Patents and Intellectual Property Rights** Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq. and applicable regulations governing inventions and patents, including the regulations issued by the Department of Commerce at 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Awards, Contracts, and Cooperative Agreements) and the standard patent rights clause set forth at 37 C.F.R. § 401.14.
Article 33	**Presidential Executive Orders** Recipients must comply with the requirements of Presidential Executive Orders related to grants (also known as federal assistance and financial assistance), the full text of which are incorporated by reference.
Article 34	**Procurement of Recovered Materials** States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962) and 2 C.F.R. § 200.323. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (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.
Article 35	**Rehabilitation Act of 1973** Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (codified as amended at 29 U.S.C. § 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
Article 36	**Reporting Recipient Integrity and Performance Matters** If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of the federal award, then the recipient must comply with the requirements set forth in the government-wide federal award term and condition for Recipient Integrity and Performance Matters is in 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated by reference.
Article 37	**Reporting Subawards and Executive Compensation** For federal awards that total or exceed $30,000, recipients are required to comply with the requirements set forth in the government-wide federal award term and condition on Reporting Subawards and Executive Compensation set forth at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated by reference.

Article 38	**Required Use of American Iron, Steel, Manufactured Products, and Construction Materials** (1) Recipients of a federal award from a financial assistance program that provides funding for infrastructure are hereby notified that none of the funds provided under this federal award may be used for a project for infrastructure unless: (a) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (b) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (c) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. (2) The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. (3) Waivers When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements. (a) When the Federal agency has determined that one of the following exceptions applies, the federal awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: (i) applying the domestic content procurement preference would be inconsistent with the public interest; (ii) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (iii) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. (b) A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. (c) There may be instances where a federal award qualifies, in whole or in part, for an existing waiver described at "Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov. (4) Definitions. The definitions applicable to this term are set forth at 2 C.F.R. § 184.3, the full text of which is incorporated by reference.
Article 39	**SAFECOM** Recipients receiving federal awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications. The SAFECOM Guidance is updated annually and can be found at Funding and Sustainment | CISA.
Article 40	**Subrecipient Monitoring and Management** Pass-through entities must comply with the requirements for subrecipient monitoring and management as set forth in 2 C.F.R. §§ 200.331-333.

Article 41	**System for Award Management and Unique Entity Identifier Requirements** Recipients are required to comply with the requirements set forth in the governmentwide federal award term and condition regarding the System for Award Management and Unique Entity Identifier Requirements in 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated reference.
Article 42	**Termination of a Federal Award** (1) By DHS. DHS may terminate a federal award, in whole or in part, for the following reasons: (a) If the recipient fails to comply with the terms and conditions of the federal award; (b) With the consent of the recipient, in which case the parties must agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated; or (c) Pursuant to the terms and conditions of the federal award, including, to the extent authorized by law, if the federal award no longer effectuates the program goals or agency priorities. (3) By the Recipient. The recipient may terminate the federal award, in whole or in part, by sending written notification to DHS stating the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if DHS determines that the remaining portion of the federal award will not accomplish the purposes for which the federal award was made, DHS may terminate the federal award in its entirety. (4) Notice. Either party will provide written notice of intent to terminate for any reason to the other party no less than 30 calendar days prior to the effective date of the termination. (5) Compliance with Closeout Requirements for Terminated Awards. The recipient must continue to comply with closeout requirements in 2 C.F.R. §§ 200.344200.345 after an award is terminated.
Article 43	**Terrorist Financing** Recipients must comply with Executive Order 13224 and applicable statutory prohibitions on transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible for ensuring compliance with the Executive Order and laws.
Article 44	**Trafficking Victims Protection Act of 2000(TVPA)** Recipients must comply with the requirements of the government-wide federal award term and condition which implements Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 106 (codified as amended at 22 U.S.C. § 7104). The federal award term and condition is in 2 C.F.R. § 175.105, the full text of which is incorporated by reference.
Article 45	**Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56** Recipients must comply with the requirements of Pub. L. 107-56, Section 817 of the USA PATRIOT Act, which amends 18 U.S.C. §§ 175–175c.
Article 46	**Use of DHS Seal, Logo and Flags** Recipients must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.
Article 47	**Whistleblower Protection Act** Recipients must comply with the statutory requirements for whistleblower protections in 10 U.S.C § 470141 U.S.C. § 4712.

Article 48	**Environmental Planning and Historic Preservation (EHP) Review** DHS/FEMA funded activities that could have an impact on the environment are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the recipient to comply with all federal, state, and local laws. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; Endangered Species Act; National Historic Preservation Act of 1966, as amended; Clean Water Act; Clean Air Act; National Flood Insurance Program regulations; and any other applicable laws, regulations and executive orders. General guidance for FEMA's EHP process is available on the DHS/FEMA Website. Specific applicant guidance on how to submit information for EHP review depends on the individual grant program. Applicants should contact their grant Program Officer to be put into contact with EHP staff responsible for assisting their specific grant program. The FEMA EHP review process must be completed before funds are released to carry out the proposed project, otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies. DHS/FEMA may also need to perform a project closeout review to ensure the applicant complied with all required EHP conditions identified in the initial review. If ground disturbing activities occur during construction, the applicant will monitor the ground disturbance, and if any potential archaeological resources are discovered, the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA. EO 11988, Floodplain Management, and EO 11990, Protection of Wetlands, require that all federal actions in or affecting the floodplain or wetlands be reviewed for opportunities to relocate, and be evaluated for social, economic, historical, environmental, legal, and safety considerations. FEMA's regulations at 44 C.F.R. Part 9 implement the EOs and require an eight-step review process if a proposed action is in a floodplain or wetland or has the potential to affect or be affected by a floodplain or wetland. The regulation also requires that the federal agency provide public notice of the proposed action at the earliest possible time to provide the opportunity for public involvement in the decision-making process (44 C.F.R. § 9.8). Where there is no opportunity to relocate the federal action, FEMA is required to undertake a detailed review to determine what measures can be taken to minimize future damages to the floodplain or wetland.
Article 49	**Applicability of DHS Standard Terms and Conditions to Tribal Nations** The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to sub-recipients as a matter of law, regulation, or executive order. If the requirement does not apply to Tribal Nations, or there is a federal law or regulation exempting its application to Tribal Nations, then the acceptance by Tribal Nations, or acquiescence to DHS Standard Terms and Conditions does not change or alter its inapplicability to a Tribal Nation. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribal Nations where it does not already exist.
Article 50	**Acceptance of Post Award Changes** In the event FEMA determines that an error in the award package has been made, or if an administrative change must be made to the award package, recipients will be notified of the change in writing. Once the notification has been made, any subsequent requests for funds will indicate recipient acceptance of the changes to the award. Please email FEMA Grant Management Operations at: ASK-GMD@fema.dhs.gov for any questions.

Article 51	**Disposition of Equipment Acquired Under the Federal Award** When original or replacement equipment acquired under this award is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the non-state recipient or subrecipient (including subrecipients of a State or Tribal Nation), must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313(e). State recipients must follow the disposition requirements in accordance with State laws and procedures. 2 C.F.R. section 200.313(b). Tribal Nations must follow the disposition requirements in accordance with Tribal laws and procedures noted in 2 C.F.R. section 200.313(b); and if such laws and procedures do not exist, then Tribal Nations must follow the disposition instructions in 2 C.F.R. section 200.313(e).
Article 52	**Prior Approval for Modification of Approved Budget** Before making any change to the FEMA approved budget for this award, a written request must be submitted and approved by FEMA as required by 2 C.F.R. section 200.308. For purposes of non-construction projects, FEMA is utilizing its discretion to impose an additional restriction under 2 C.F.R. section 200.308(i) regarding the transfer of funds among direct cost categories, programs, functions, or activities. For awards with an approved budget where the federal share is greater than the simplified acquisition threshold (currently $250,000) and where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved, transferring funds among direct cost categories, programs, functions, or activities is unallowable without prior written approval from FEMA. For purposes of awards that support both construction and non-construction work, 2 C.F.R. section 200.308((f)(9) requires the recipient to obtain prior written approval from FEMA before making any fund or budget transfers between the two types of work. Any deviations from a FEMA approved budget must be reported in the first Federal Financial Report (SF-425) that is submitted following any budget deviation, regardless of whether the budget deviation requires prior written approval.
Article 53	**Indirect Cost Rate** 2 C.F.R. section 200.211(b)(16) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for the award is stated in the budget documents or other materials approved by FEMA and included in the award file.
Article 54	**Build America, Buy America Act (BABAA) Required Contract Provision & Self-Certification** In addition to the DHS Standard Terms & Conditions regarding Required Use of American Iron, Steel, Manufactured Products, and Construction Materials, recipients and subrecipients of FEMA financial assistance for programs that are subject to BABAA must include a Buy America preference contract provision as noted in 2 C.F.R. section 184.4 and a self-certification as required by the FEMA Buy America Preference in FEMA Financial Assistance Programs for Infrastructure (FEMA Interim Policy #207-22-0001). This requirement applies to all subawards, contracts, and purchase orders for work performed, or products supplied under the FEMA award subject to BABAA.
Article 55	**OPSG Program Performance Goal** In addition to the Biannual Strategy Implementation Report (BSIR) submission requirements outlined in the Preparedness Grants Manual, recipients must demonstrate how the grant-funded project addressed the core capability gap associated with this project and identified in the Threat and Hazard Identification and Risk Analysis (THIRA) or Stakeholder Preparedness Review (SPR) or sustains existing capabilities as applicable. The capability gap reduction or capability sustainment must be addressed in the Project Description of the BSIR for each project.

Article 56	**HSGP Performance Goal** In addition to the Biannual Strategy Implementation Report (BSIR) submission requirements outlined in the Preparedness Grants Manual, recipients must demonstrate how the grant-funded project addressed the core capability gap associated with this project and identified in the Threat and Hazard Identification and Risk Analysis (THIRA) or Stakeholder Preparedness Review (SPR) or sustains existing capabilities as applicable. The capability gap reduction must be addressed in the Project Description of the BSIR for each project.
Article 57	**This article has been removed**
Article 58	**Operation Stonegarden Program Hold** The recipient is prohibited from drawing down OPSG funding under this award or reimbursing OPSG subrecipients of this award until each unique, specific, or modified county level, tribal, or equivalent Operations Order or Fragmentary Order (FRAGO) has been reviewed by FEMA/GPD and Customs and Border Protection/United States Border Patrol (CBP/USBP). The recipient will receive the official notification of approval from FEMA/GPD.
Article 59	**Non-Applicability of Specific Agreement Articles** Notwithstanding its inclusion in this award package, the following Agreement Article does not apply to this grant award: 1. Termination of a Federal Award. This provision is consistent with any terms of the Notice of Funding Opportunity that state Paragraph C.XL (Termination of a Federal Award) of the FY 2025 DHS Standard Terms and Conditions does not apply to this award. Refer to the Notice of Funding Opportunity for the terms governing award termination.
Article 60	**Period of Performance and Budget Period** Notwithstanding language in the Obligating Document or in the other terms of this award package, the Period of Performance and the Budget Period for this grant award is October 1, 2025 to September 30, 2026. The Period of Performance and Budget Period stated in the Obligating Document shall not apply.

Article 61	**State Homeland Security Program: Compliance with Federal Immigration Law** The following term applies to State Homeland Security Program funding under this award: 1. Prohibition a. The state, territorial, or local recipient is prohibited from being designated by the Department of Homeland Security or the Department of Justice as a sanctuary jurisdiction. If the Department of Homeland Security or Department of Justice designates a state or territory as a sanctuary jurisdiction after the Department of Homeland Security makes a grant award, the state or territorial recipient is prohibited from making any financial obligations under the grant award on or after the date of designation until the Department of Homeland Security removes that designation. The Department of Homeland Security will suspend that portion of the grant award supported by risk-based funding and not make payments to the state or territorial recipient on or after the date of designation until the Department of Homeland Security or Department of Justice removes that designation. This term and condition applies to the funding provided under the relative risk methodology pursuant to Section 2007 of the Homeland Security Act of 2002 (6 U.S.C. § 608) and does not apply to the minimum allocation to that state or territory required by Section 2004(e) of the Homeland Security Act of 2002 (6 U.S.C. § 605(e)). b. The state, territorial, or local recipient is prohibited from making subawards to a state, territorial, or local government that the Department of Homeland Security or Department of Justice has designated as a sanctuary jurisdiction. If the Department of Homeland Security or Department of Justice designates a state, territorial, or local government as a sanctuary jurisdiction after the state, territorial, or local government recipient makes a subaward to that state, territorial, or local government, the state, territorial, or local recipient must suspend the subaward, the state, territorial, or local recipient must not make any additional payments to the state, territorial, or local government, and the state, territorial, or local government is prohibited from making any financial obligations under the subaward on and after the date of designation until the Department of Homeland Security or Department of Justice removes that designation. This term and condition applies to all funding provided to the state or territorial recipient, including both the statutory minimum as well as risk-based funding allocations. c. The Department of Homeland Security designates a state, territory, or local government as a sanctuary jurisdiction if it fails to comply with that requirements set forth in paragraphs 2.a.i to v of this term and condition. 2. Certification a. The state, territorial or local recipient and subrecipients must certify under penalty of perjury pursuant to 28 U.S.C. § 1746, and using a form that is acceptable to the Department of Homeland Security, that they will comply with the following requirements related to coordination and cooperation with the Department of Homeland Security and immigration officials: i. They will comply with the requirements of 8 U.S.C. §§ 1373 and 1644. These statutes prohibit restrictions on information sharing by state and local government entities with the Department of Homeland Security regarding the citizenship or immigration status, lawful or unlawful, of any individual. Additionally, 8 U.S.C. § 1373 prohibits any person or agency from prohibiting, or in any way restricting, a Federal, state, or local government entity from doing any of the following with respect to information regarding the immigration status of any individual: (1) sending such information to, or requesting or receiving such information from, Federal immigration officials; (2) maintaining such information; or (3) exchanging such information with any other Federal, state, or local government entity. ii. They will comply with other relevant laws related to immigration, including prohibitions on encouraging or inducing an alien to come to, enter, or reside in the United States in violation of law, 8 U.S.C. § 1324(a)(1)(A)(iv), prohibitions on transporting or moving illegal aliens, 8 U.S.C. § 1324(a)(1)(A)(ii), prohibitions on harboring, concealing, or shielding from detection illegal aliens, 8 U.S.C. § 1324(a)(1)(A)(iii), and any applicable conspiracy, aiding or abetting, or attempt liability regarding these statutes. iii. They will honor requests for cooperation, such as participating in joint operations, sharing of information, or requests for short term detention of an alien pursuant to a valid detainer. A jurisdiction does not fail to comply with this requirement merely because it lacks the necessary resources to assist in a particular instance. iv. They will provide access to detainees, such as when an immigration officer seeks to interview a person who might be a removable alien. v. They will not leak or otherwise publicize the existence of an immigration enforcement operation. b. The state or territorial recipient must require a state, territorial, or local government subrecipient to make the certification above before providing them with any funding under the subaward. 3. Materiality and Remedies for Noncompliance This term and condition is material to the Department of Homeland Security's decision to continue with this grant award and the Department of Homeland Security may take any remedy for noncompliance, including termination, if the state or territorial recipient or a local government subrecipient fails to comply with this term and condition.

Article 62	**State Homeland Security Program: Non-Applicability of Specific Terms and Agreement Articles** The following term applies to State Homeland Security Program funding under this award: Notwithstanding their inclusion in this award package, the following terms and Agreement Articles do not apply to this grant award: (1) paragraph C.IX (Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions and the Agreement Article titled “Communication and Cooperation with the Department of Homeland Security and Immigration Officials” in this award package; and (2) paragraph C.XVII(2)(a)(iii) (Anti-Discrimination Grant Award Certification regarding immigration) of the DHS Standard Terms and Conditions and paragraph (2)(a)(iii) of the Agreement Article titled “Anti-Discrimination” in this award package.
Article 63	**State Homeland Security Program: Impact of San Francisco v. Trump Preliminary Injunction** The following term applies to State Homeland Security Program funding under this award: Pursuant to the preliminary injunction order issued on August 22, 2025, in City and County of San Francisco, et al. v. Trump, et al., No. 3:25-cv-01350 (N.D. Cal.), the following terms and conditions do not apply to awards or subawards issued to any of the plaintiffs subject to the preliminary injunction order while the order remains in effect: (1) paragraph C.IX (Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions and the Agreement Article titled “Communication and Cooperation with the Department of Homeland Security and Immigration Officials” in this award package; (2) paragraph C.XVII(2)(a)(iii) (Anti-Discrimination Grant Award Certification regarding immigration) of the DHS Standard Terms and Conditions and paragraph (2)(a)(iii) of the Agreement Article titled “Anti-Discrimination” in this award package; and (3) the “State Homeland Security Program: Compliance with Federal Immigration Law” Agreement Article. If the preliminary injunction is stayed, vacated, or extinguished, the “State Homeland Security Program: Compliance with Federal Immigration Law” Agreement Article will immediately become effective.
Article 64	**State Homeland Security Program: Impact of State of Illinois v. FEMA Injunction** Pursuant to the memorandum and order issued on September 24, 2025, in State of Illinois, et al. v. Federal Emergency Management Agency, et. al, No. 25-206 (D. R.I.), the following terms and conditions do not apply to awards or subawards issued to any of the plaintiffs subject to the injunction order while the order remains in effect: (1) paragraph C.IX (Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions and the Agreement Article titled “Communication and Cooperation with the Department of Homeland Security and Immigration Officials” in this award package; (2) paragraph C.XVII(2)(a)(iii) (Anti-Discrimination Grant Award Certification regarding immigration) of the DHS Standard Terms and Conditions and paragraph (2)(a)(iii) of the Agreement Article titled “Anti-Discrimination” in this award package; and (3) the “State Homeland Security Program: Compliance with Federal Immigration Law” Agreement Article. If the injunction is stayed, vacated, or extinguished, the “State Homeland Security Program: Compliance with Federal Immigration Law” Agreement Article will immediately become effective.

Article 65	**Urban Area Security Initiative: Compliance with Federal Immigration Law** The following term applies to Urban Area Security Initiative funding under this award: 1. Prohibition a. The state, territorial, or local government recipient is prohibited from being designated by the Department of Homeland Security or Department of Justice as a sanctuary jurisdiction. If the Department of Homeland Security or Department of Justice designates the state, territory, or local government as a sanctuary jurisdiction after the Department of Homeland Security has made the grant award, the state, territorial, or local government recipient is prohibited from making any financial obligations under the grant award on or after the date of designation until the Department of Homeland Security or Department of Justice removes that designation. The Department of Homeland Security will suspend the grant award and not make payments to the state, local, or territorial recipient on or after the date of designation until the Department of Homeland Security or Department of Justice removes that designation. b. The state, local, or territorial recipient is prohibited from making subawards to a state, local, or territorial government that the Department of Homeland Security or Department of Justice has designated as sanctuary jurisdiction. If the Department of Homeland Security or Department of Justice designates a state, local, or territorial government as a sanctuary jurisdiction after the recipient makes a subaward, the recipient must suspend the subaward, the recipient must not make any additional payments to the subrecipient, and the subrecipient is prohibited from making any financial obligations under the subaward on and after the date of designation until the Department of Homeland Security or Department of Justice removes that designation. c. The Department of Homeland Security designates a state, territory, or local government as a sanctuary jurisdiction if it fails to comply with that requirements set forth in paragraphs 2.a.i to v of this term and condition. 2. Certification a. The state, territorial or local recipient and subrecipients must certify under penalty of perjury pursuant to 28 U.S.C. § 1746, and using a form that is acceptable to the Department of Homeland Security, that they will comply with the following requirements related to coordination and cooperation with the Department of Homeland Security and immigration officials: i. They will comply with the requirements of 8 U.S.C. §§ 1373 and 1644. These statutes prohibit restrictions on information sharing by state and local government entities with the Department of Homeland Security regarding the citizenship or immigration status, lawful or unlawful, of any individual. Additionally, 8 U.S.C. § 1373 prohibits any person or agency from prohibiting, or in any way restricting, a Federal, state, or local government entity from doing any of the following with respect to information regarding the immigration status of any individual: (1) sending such information to, or requesting or receiving such information from, Federal immigration officials; (2) maintaining such information; or (3) exchanging such information with any other Federal, state, or local government entity. ii. They will comply with other relevant laws related to immigration, including prohibitions on encouraging or inducing an alien to come to, enter, or reside in the United States in violation of law, 8 U.S.C. § 1324(a)(1)(A)(iv), prohibitions on transporting or moving illegal aliens, 8 U.S.C. § 1324(a)(1)(A)(ii), prohibitions on harboring, concealing, or shielding from detection illegal aliens, 8 U.S.C. § 1324(a)(1)(A)(iii), and any applicable conspiracy, aiding or abetting, or attempt liability regarding these statutes. iii. They will honor requests for cooperation, such as participating in joint operations, sharing of information, or requests for short term detention of an alien pursuant to a valid detainer. A jurisdiction does not fail to comply with this requirement merely because it lacks the necessary resources to assist in a particular instance. iv. They will provide access to detainees, such as when an immigration officer seeks to interview a person who might be a removable alien. v. They will not leak or otherwise publicize the existence of an immigration enforcement operation. b. The state or territorial recipient must require a state, territorial, or local government subrecipient to make the certification above before providing them with any funding under the subaward.

Article 66	**Urban Area Security Initiative: Non-Applicability of Specific Terms and Agreement Articles** The following term applies to Urban Area Security Initiative funding under this award: Notwithstanding their inclusion in this award package, the following terms and Agreement Articles do not apply to this grant award: (1) paragraph C.IX (Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions and the Agreement Article titled "Communication and Cooperation with the Department of Homeland Security and Immigration Officials" in this award package; and (2) paragraph C.XVII(2)(a)(iii) (Anti-Discrimination Grant Award Certification regarding immigration) of the DHS Standard Terms and Conditions and paragraph (2)(a)(iii) of the Agreement Article titled "Anti-Discrimination" in this award package.
Article 67	**Urban Area Security Initiative: Impact of San Francisco v. Trump Preliminary Injunction** The following term applies to Urban Area Security Initiative funding under this award: Pursuant to the preliminary injunction order issued on August 22, 2025, in City and County of San Francisco, et al. v. Trump, et al., No. 3:25-cv-01350 (N.D. Cal.), the following terms and conditions do not apply to awards or subawards issued to any of the plaintiffs subject to the preliminary injunction order while the order remains in effect: (1) paragraph C.IX (Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions and the Agreement Article titled "Communication and Cooperation with the Department of Homeland Security and Immigration Officials" in this award package; (2) paragraph C.XVII(2)(a)(iii) (Anti-Discrimination Grant Award Certification regarding immigration) of the DHS Standard Terms and Conditions and paragraph (2)(a)(iii) of the Agreement Article titled "Anti-Discrimination" in this award package; and (3) the "Urban Area Security Initiative: Compliance with Federal Immigration Law" Agreement Article. If the preliminary injunction is stayed, vacated, or extinguished, the "Urban Area Security Initiative; Compliance with Federal Immigration Law" Agreement Article will immediately become effective.
Article 68	**Urban Area Security Initiative: Impact of State of Illinois v. FEMA Injunction** The following term applies to Urban Area Security Initiative funding under this award: Pursuant to the memorandum and order issued on September 24, 2025, in State of Illinois, et al. v. Federal Emergency Management Agency, et. al, No. 25-206 (D. R.I.), the following terms and conditions do not apply to awards or subawards issued to any of the plaintiffs subject to the injunction order while the order remains in effect: (1) paragraph C.IX (Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions and the Agreement Article titled "Communication and Cooperation with the Department of Homeland Security and Immigration Officials" in this award package; (2) paragraph C.XVII(2)(a)(iii) (Anti-Discrimination Grant Award Certification regarding immigration) of the DHS Standard Terms and Conditions and paragraph (2)(a)(iii) of the Agreement Article titled "Anti-Discrimination" in this award package; and (3) the "Urban Area Security Initiative: Compliance with Federal Immigration Law" Agreement Article. If the injunction is stayed, vacated, or extinguished, the "Urban Area Security Initiative: Compliance with Federal Immigration Law" Agreement Article will immediately become effective.

Article 69	**Operation Stonegarden: Non-Applicability of Specific Terms and Agreement Articles** The following term applies to Operation Stonegarden funding under this award. Notwithstanding their inclusion in this award package, the following terms and Agreement Articles do not apply to this grant award: (1) paragraph C.IX (Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions and the Agreement Article titled "Communication and Cooperation with the Department of Homeland Security and Immigration Officials" in this award package; and (2) paragraph C.XVII(2)(a)(iii) (Anti-Discrimination Grant Award Certification regarding immigration) of the DHS Standard Terms and Conditions and paragraph (2)(a)(iii) of the Agreement Article titled "Anti-Discrimination" in this award package.
Article 70	**Summary Description of Award and Subprograms** The purpose of the FY 2025 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goal to Strengthen National Preparedness and Resilience. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community. This HSGP award consists of State Homeland Security Program (SHSP) funding in the amount of $4,362,750, Urban Area Security Initiative (UASI) funding in the amount of $11,782,120 Seattle-Tacoma-Bellevue Urban Area, and Operation Stonegarden (OPSG) funding in the amount of $1,435,000.
Article 71	**State Homeland Security Program: Rescission of Agreement Articles Pursuant to State of Illinois, et al. v. FEMA, et al.** In accordance with the U.S. District Court for the District of Rhode Island's Order in State of Illinois, et al. v. FEMA, et al., No. 25-206 (D. R.I.), dated October 14, 2025, and FEMA Information Bulletin No. 538, the following terms and conditions are rescinded with respect to the State Homeland Security Program funding under this award: 1. Paragraph C.IX (Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions. 2. Paragraph C.XVII(2)(a)(iii) (Anti-Discrimination Grant Award Certification regarding immigration) of the DHS Standard Terms and Conditions. 3. The "Communication and Cooperation with the Department of Homeland Security and Immigration Officials" Agreement Article. 4. Paragraph (2)(a)(iii) of the Agreement Article titled "Anti-Discrimination". 5. The "State Homeland Security Program: Compliance with Federal Immigration Law" Agreement Article. 6. The "State Homeland Security Program: Impact of State of Illinois v. FEMA Injunction" Agreement Article. 7. The "State Homeland Security Program: Impact of San Francisco v. Trump Preliminary Injunction" Agreement Article.

Article 72	**Urban Area Security Initiative: Rescission of Agreement Articles Pursuant to State of Illinois, et al. v. FEMA, et al.** In accordance with the U.S. District Court for the District of Rhode Island's Order in State of Illinois, et al. v. FEMA, et al., No. 25-206 (D. R.I.), dated October 14, 2025, and FEMA Information Bulletin No. 538, the following terms and conditions are rescinded with respect to the Urban Area Security Initiative funding under this award: 1. Paragraph C.IX (Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions. 2. Paragraph C.XVII(2)(a)(iii) (Anti-Discrimination Grant Award Certification regarding immigration) of the DHS Standard Terms and Conditions. 3. The "Communication and Cooperation with the Department of Homeland Security and Immigration Officials" Agreement Article. 4. Paragraph (2)(a)(iii) of the Agreement Article titled "Anti-Discrimination". 5. The "Urban Area Security Initiative: Compliance with Federal Immigration Law" Agreement Article. 6. The "Urban Area Security Initiative: Impact of State of Illinois v. FEMA Injunction" Agreement Article. 7. The "Urban Area Security Initiative: Impact of San Francisco v. Trump Preliminary Injunction" Agreement Article.
Article 73	**Amended Award Amount Pursuant to State of Illinois, et al. v. Kristi Noem, et al. (D.RI).** Pursuant to the Permanent Injunction Order issued by the U.S. District Court for the District of Rhode Island in State of Illinois, et al. v. Kristi Noem, et al., No. 1:25-cv-00495, dated December 22, 2025, and Information Bulletin (IB) 540, the amount of funding awarded by this Fiscal Year 2025 Homeland Security Grant Program (HSGP) grant has been amended to reflect the amount set forth in the Notice of Funding Opportunity dated August 1, 2025. Further, the "Summary Description of Award and Subprograms" is amended to read as follows: The purpose of the FY 2025 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goal to Strengthen National Preparedness and Resilience. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community. This HSGP award consists of State Homeland Security Program (SHSP) funding in the amount of $5,483,241, Urban Area Security Initiative (UASI) funding in the amount of $12,713,580 Seattle-Tacoma-Bellevue Urban Area, and Operation Stonegarden (OPSG) funding in the amount of $1,435,000.
Article 74	**Amended Period of Performance and Budget Period Pursuant to State of Illinois, et al. v. Kristi Noem, et al. (D.RI) and State of Michigan et al. v. Kristi Noem et al. (D.OR).** Pursuant to the Permanent Injunction Order issued by the U.S. District Court for the District of Rhode Island in State of Illinois, et al. v. Kristi Noem, et al., No. 1:25-cv-00495, dated December 22, 2025 and the Permanent Injunction Order issued by the U.S. District Court for the District of Oregon in State of Michigan, et al. v. Kristi Noem et al., No 6:25-cv-02053-AP, dated December 23, 2025, the Agreement Article titled "Period of Performance and Budget Period") of your award package is rescinded. The new Period of Performance and Budget Period for this award is September 1, 2025 to August 31, 2028.
Article 75	**National Priority Area Program Hold (30%)** Consistent with the FY 2025 HSGP NOFO, the recipient is prohibited from drawing down funding for projects needed to meet the 30% minimum spending requirements for National Priority Areas under this award until each project is reviewed by FEMA/GPD to determine effectiveness. Per IB 550, the 45-day pass through period will not begin for these funds until this hold is lifted.
Article 76	**Law Enforcement Terrorism Prevention Activities Program Hold (35%)** Consistent with the FY 2025 HSGP NOFO, the recipient is prohibited from drawing down funding for projects needed to meet the 35% minimum allocation requirements for Law Enforcement Terrorism Prevention Program Activities (LETPA) under this award until each project is reviewed by FEMA/GPD to determine alignment with LETPA requirements. Per IB 550, the 45-day pass through period will not begin for these funds until this hold is lifted.

Obligating document

1. Agreement No.	2. Amendment No.	3. Recipient No.	4. Type of Action	5. Control No.
EMW-2025-SS-05030	1	916001095	AMENDMENT	WX04775N2025T, WX04777N2025T, WX04778N2025T

6. Recipient Name and Address	7. Issuing FEMA Office and Address	8. Payment Office and Address
MILITARY DEPARTMENT, WASHINGTON STATE CAMP MURRY BUILDING 1 CAMP MURRAY, WA 98430	Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646	FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742

9. Name of Recipient Project Officer	9a. Phone No.	10. Name of FEMA Project Coordinator	10a. Phone No.
Gail Cram	253-5127472	Homeland Security Grant Program Grant Program	1-877-585-3242

11. Effective Date of This Action	12. Method of Payment	13. Assistance Arrangement	14. Performance Period
05/26/2026	OTHER - FEMA GO	COST REIMBURSEMENT	09/01/2025 to **08/31/2028** **Budget Period** 09/01/2025 to **08/31/2028**

15. Description of Action a. (Indicate funding data for awards or financial changes)

Program Name Abbreviation	Assistance Listing No.	Accounting Data (ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
HSGP	97.067	2025-FA-GG01 - P410-xxxx-4101-D	$5,483,241.00	$0.00	$5,483,241.00	See Totals
HSGP	97.067	2025-FA-GH01 - P410-xxxx-4101-D	$12,713,580.00	$0.00	$12,713,580.00	See Totals
HSGP	97.067	2025-FA-GG02 - P410-xxxx-4101-D	$1,435,000.00	$0.00	$1,435,000.00	See Totals
		Totals	$19,631,821.00	$0.00	$19,631,821.00	$0.00

b. To describe changes other than funding data or financial changes, attach schedule and check here:
N/A

~~**16.FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)**~~
This field is not applicable for digitally signed grant agreements

~~**17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)**~~
(Recipients are not required to sign and return copies of this document. However, recipients should keep a copy of this documents for their records.)

18. FEMA SIGNATORY OFFICIAL (Name and Title)	DATE
David Gudinas, Deputy Assistant Administrator (Acting) Grant Programs Directorate | Resilience	**01/30/2026**

25UASI ENDURING SECURITY NEEDS (EN) Work Plan

Snohomish County Department of Emergency Management

UASI Enduring Security Needs (EN)

This investment focuses on regional work engaging the whole community to advance community planning and to build and sustain resilience.

The UAWG has identified several key regional projects that sustain capabilities within the core capabilities of Intelligence and Information Sharing; Community Resilience; Public Information and Warning; Cybersecurity; Operational Coordination; Screening, Search, and Detection; Mass Care Services, Interdiction and Disruption; Mass Search & Rescue Operations; and Planning. Projects focus on effective planning, organizing, training, exercising, and equipment to build, sustain, and deliver capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.

Specific core capabilities, gaps, and deliverables are detailed in the accompanying Project Descriptions. This investment was developed in alignment with the FY 2025 Seattle Urban Area Security Initiative Notice of Funding Opportunity, relevant FEMA guidance, the Seattle Urban Area Security Initiative Threat and Hazard Identification and Risk Assessment (THIRA) and Stakeholder Preparedness Review (SPR), as well as applicable state and local strategic plans.

All funding to support emergency communications investments will comply with the SAFECOM Guidance on Emergency Communications Grants (SAFECOM Guidance) to ensure that federally funded investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

ENDURING NEEDS PROJECT:

Planning

This local investment funds salaries, benefits, training, and equipment to support UASI Planning efforts to include the UASI strategic plan development, UASI THIRA and SPR development, and participation in project planning and oversight through UASI Subcommittees, UAWG, and Core Group

Additional initiatives include:
-Rescue vehicle system
-Pair of replacement Bell UH-1 main rotor blades for the primary Snohomish County medium-lift UH-1H helicopter

All efforts will sustain and enhance the core capabilities of Planning and Interdiction and Disruption.

The UASI SPR identified the following gaps:
- Limited integration of planning across departments and jurisdictions
- Lack of equipment in aerial detection
- Armored Vehicles are also necessary to support response and transportation or law enforcement and tactical medics to scenes of violence.

The UASI SPR “Approaches for Addressing Capability Gaps and Sustainment Needs” identified the following ways to address the identified gaps:
- Form cross-functional planning teams
- Procure Equipment to maintain Helicopter and Rescue Vehicle system
- Purchase armored vehicles, such as bearcats or other like large transportation vehicle, to support response and transportation of law enforcement and tactical medics to scenes of violence

SUBPROJECTS (SP):

SP #1 *Planning - Snohomish County*

SOLUTION AREA

PLANNING	ORGANIZATION	EQUIPMENT	TRAINING	EXERCISE	**TOTAL**
$0.00	$415,030.00	$0.00	$16,800.00	$0.00	**$431,830.00**

CORE CAPABILITY BEING ADDRESSED

Planning

Project Overview

This project funds salaries, benefits, travel, training, and M&A to support UASI Planning efforts to include the UASI THIRA and SPR development, and participation in project planning and oversight through UASI Subcommittees, UAWG, and Core Group.

NEXUS TO TERRORISM

Funding supports positions responsible for developing plans, training, and exercising cross-jurisdictional communications and coordination, directly addressing the THIRA/SPR-identified capability gap in integrated planning across departments and jurisdictions. These efforts strengthen the region's operational readiness for a terrorism incident by improving coordinated response and information-sharing capabilities.

DESIRED OUTCOMES

Achieve an integrated, cross-jurisdictional planning and communications coordination across the Seattle UASI region to rapidly share information, coordinate operations and execute a unified response during a terrorism attack, resulting in improved regional readiness.

SP #2 *Rescue Vehicle System*

Submission of a waiver request and FEMA approval required prior to procurement.

SOLUTION AREA

PLANNING	ORGANIZATION	EQUIPMENT	TRAINING	EXERCISE	**TOTAL**
$0.00	$0.00	$550,000.00	$0.00	$0.00	**$550,000.00**

CORE CAPABILITY BEING ADDRESSED

Interdiction and Disruption

Project Overview

This project funds the procurement of an armored vehicle to support response and transportation of law enforcement and tactical medics to scenes of violence.

NEXUS TO TERRORISM

This project will support rapid intervention in a high threat and hazardous environment with the purchase of a CBRNE response capable rescue vehicle and electronics to be used in active shooter scenarios, hostage or other search and rescue operations, and support the prevention, response of, and recovery from a terrorist event.

DESIRED OUTCOMES

The procurement of a rescue vehicle will enhance regional capabilities and safely transport law enforcement and first responders to an active shooter threat and terrorist incidents.

SP #3 *Snohomish County UH-1H rotor blade replacement*

SOLUTION AREA

PLANNING	ORGANIZATION	EQUIPMENT	TRAINING	EXERCISE	**TOTAL**
$0.00	$0.00	$430,000.00	$0.00	$0.00	**$430,000.00**

CORE CAPABILITY BEING ADDRESSED
Interdiction and Disruption

Project Overview
This project funds the replacement of helicopter rotor blades to ensure safe, reliable, and mission-ready aircraft operations. Work includes obtaining vendor pricing, purchasing the new blade set, and completing all required removal, installation, balancing, and testing procedures necessary to return the aircraft to service.

NEXUS TO TERRORISM
Helicopters will be critical during a complex coordinated terrorist attack for rapidly deploying local, state, and federal resources to assist with interdiction and disruption activities carried out in search of identified suspects. Also, traditional modes of transportation may be compromised during such an attack and helicopters will be critical for movement of LE resources, fire resources, medical supplies, command and control assets, and communication equipment. Real time monitoring of ongoing developments will require aircraft. After the initial attack and subsequent response, helicopters will be crucial in the rescue and recovery of injured or trapped people, and the delivery of those people to medical care facilities.

DESIRED OUTCOMES
The desired outcome of the work is to ensure continued support during critical incidents, and rescues during natural disasters or terrorist attacks in the Seattle UASI region.

Attachment D-2

The Subrecipient has not been allocated National Priority Project funding under this Agreement, so there is no associated Work Plan.

25UASI Budget Overview

Snohomish County Department of Emergency Management

TOTAL AGREEMENT AMOUNT	**$1,484,603.00**
	AMOUNT
TOTAL LETPA	$775,000.00
	52% of the agreement total
TOTAL PERSONNEL	$472,803.00
	32% of the agreement total

ENDURING NEEDS (EN) SUBPROJECT BUDGET	
TITLE	**AMOUNT**
SP #1 Planning - Snohomish County	**$431,830.00**
SP #2 Rescue Vehicle System	**$550,000.00**
SP #3 Snohomish County UH-1H rotor blade replacement	**$430,000.00**
EN M&A	**$72,773.00**
EN SUBTOTAL	$1,484,603.00
EN INDIRECT	**$0.00**
EN TOTAL	**$1,484,603.00**

25UASI TIMELINE

Snohomish County Department of Emergency Management

DATE	***TASK***
September 1, 2025	Grant Agreement start date
September 1, 2026	Estimated date work scheduled
October 31, 2026	Submit Reimbursement Request & Progress Report
January 31, 2027	Submit Reimbursement Request & Progress Report
April 30, 2027	Submit Reimbursement Request & Progress Report
July 31, 2027	Submit Reimbursement Request & Progress Report
October 31, 2027	Submit Reimbursement Request & Progress Report
January 31, 2028	Submit Reimbursement Request & Progress Report
April 30, 2028	Submit Reimbursement Request & Progress Report
June 30, 2028	Submit Reimbursement Request & Progress Report
August 31, 2028	Grant Agreement end date
October 15, 2028	Submit Final Reimbursement Request & Closeout Report

HSGP Performance Period: September 1, 2025, to August 31, 2028

BUILD AMERICA, BUY AMERICA ACT SELF-CERTIFICATION

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

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

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

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

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

____

Signature of [Contractor’s or Subcontractor’s] Authorized Official

<u>Enter Name and Title</u>
Name and Title of [Contractor’s or Subcontractor’s] Authorized Official

Attachment E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SANTA CLARA, et al., Plaintiffs, v. KRISTI NOEM, et al., Defendants.	Case No. 25-cv-08330-WHO **ORDER GRANTING PRELIMINARY INJUNCTION** Re: Dkt. Nos. 19, 20, 66, 69, 70, 71

Plaintiffs[1], a collective of cities, counties, and municipalities, regularly receive grants from the Department of Homeland Security ("DHS") and the Federal Emergency Management Agency ("FEMA") to advance public safety, disaster preparedness, and emergency response management. To receive this funding, plaintiffs typically must agree to conditions that are attached to the grants by the agency, such as complying with federal anti-discrimination law. Plaintiffs have accepted DHS and FEMA conditional grants for years without concern.

This year is different. Shortly after taking office in January, President Trump began to issue a slew of Executive Orders ("EOs") targeting diversity, equity, and inclusion ("DEI")

[1] Plaintiffs are the County of Santa Clara ("Santa Clara"), City and County of San Francisco ("San Francisco"), City of Alameda ("Alameda"), City of Bellingham ("Bellingham"), City of Berkeley ("Berkeley"), City of Culver City ("Culver City"), City of Los Angeles ("Los Angeles"), County of Los Angeles ("Los Angeles County"), Los Angeles County Consolidated Fire Protection District ("LA County CFPD"), Martin Luther King, Jr. County ("King County"), County of Marin ("Marin County"), City of Oakland ("Oakland"), City of Palo Alto ("Palo Alto"), City of Pasadena ("Pasadena"), City of Petaluma ("Petaluma"), Pierce County, City of Sacramento ("Sacramento"), City of San Diego ("San Diego"), County of San Diego ("San Diego County"), City of San José ("San José"), County of San Mateo ("San Mateo County"), City of Santa Monica ("Santa Monica"), City of Santa Rosa ("Santa Rosa"), Snohomish County, County of Sonoma ("Sonoma County"), Sonoma County Community Development Commission ("SCCDC"), Sonoma County Water Agency ("Sonoma Water"), Sonoma Valley County Sanitation District ("SVCSD"), and the City of Tucson ("Tucson").

initiatives, directing federal agencies to follow suit. In response, DHS and FEMA began issuing funding conditioned on grantees refusing to "advance or promote DEI," as well as promising to comply with all future EOs issued by the President.

Plaintiffs challenge these conditions as applied to nine categories of DHS and FEMA grants that they have received or would receive in the normal course (the "Questioned Grants"). They claim that these conditions violate the separation of powers, the spending powers of the United States Constitution, and the Administrative Procedure Act (the "APA"). They seek a preliminary injunction preventing defendants[2] from conditioning any grants with these allegedly unconstitutional conditions.

Defendants' arguments here have been soundly rejected by courts around the country, which have found similar agency conditional funding schemes to be unconstitutional.[3] The message to the Executive Branch in these cases is consistent: no one is above the law, and the separation of powers between the three branches must be respected. I similarly hold that plaintiffs have sufficiently shown a likelihood of success on the merits: DHS and FEMA's Discrimination and Executive Order conditions are ambiguous and violate fundamental principles of

[2] Defendants include Kristi Noem ("Noem"), in her official capacity as Secretary of Homeland Security; the United States Department of Homeland Security ("DHS"); David Richardson ("Richardson"), in his official capacity as Senior Official Performing the Duties of FEMA Administrator; and the Federal Emergency Management Agency ("FEMA").

[3] *S.F. Unified Sch. Dist. v. AmeriCorps*, 789 F. Supp. 3d 716 (N.D. Cal. 2025); *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, 767 F. Supp. 3d 243 (D. Md. 2025); *Nat'l Educ. Ass'n v. United States Dep't of Educ.*, 779 F. Supp. 3d 149 (D.N.H. 2025); *Nat'l Ass'n for Advancement of Colored People v. U.S. Dep't of Educ.*, 779 F. Supp. 3d 53 (D.D.C. 2025); *Housing Auth. of the City & Cnty. of S.F. v. Turner*, No. 25-cv-08859-JST, 2025 WL 3187761 (N.D. Cal. Nov. 14, 2025); *Martin Luther King, Jr. Cnty. v. Turner*, 785 F. Supp. 3d 863 (W.D. Wash. 2025); *City & Cnty. of S.F. v. Trump*, 783 F. Supp. 3d 1148 (N.D. Cal. 2025); *City of Fresno v. Turner*, No. 25-cv-07070-RS, 2025 WL 2721390 (N.D. Cal. Sept. 23, 2025); *Thakur v. Trump*, 148 F.4th 1096 (9th Cir. 2025); *Am. Ass'n of Univ. Profs. v. Trump*, No. 25-cv-07864-RFL, 2025 WL 3187762 (N.D. Cal. Nov. 14, 2025); *City of Seattle v. Trump*, No. 2:25-cv-01435-BJR, 2025 WL 3041905 (W.D. Wash. Oct. 31, 2025); see *also Illinois v. Fed. Emergency Mgmt. Agency*, No. 25-206 WES, 2025 WL 2716277 (D.R.I. Sept. 24, 2025) (denying summary judgment on similar questions of DHS and FEMA grant conditions); *Pres. & Fellows of Harvard College v. U.S. Dep't of Health & Human Servs.*, Civil Action Nos. 25-cv-11048-ADB, 25-cv-10910-ADB, 2025 WL 2528380 (D. Mass. Sept. 3, 2025) (granting permanent injunction on similar questions). *But see S.F. A.I.D.S. Found. v. Trump*, 786 F. Supp. 3d 1184 (N.D. Cal. 2025); *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 25-1189 (4th Cir. Mar. 14, 2025) (Stay Order at ECF No. 29).

constitutional law. Plaintiffs' harm absent relief—potential loss of millions in disaster and emergency funding for over thirty million residents—is significant. The equities and public interest heavily favor issuance of a preliminary injunction. For all the reasons set forth below, plaintiffs' motion for a preliminary injunction is GRANTED.

BACKGROUND

The grants at stake in this litigation provide critical public safety and emergency management funding for plaintiffs. This section describes the grants involved, the conditions with which defendants are requiring compliance, and the threatened impact on each plaintiff.

1. CONGRESSIONAL APPROPRIATIONS FOR DISASTER PREPAREDNESS AND MANAGEMENT

Congress is responsible for appropriating "billions of dollars" for DHS and FEMA, an agency within DHS, to distribute as "grants to state and local governments." Complaint for Injunctive and Declaratory Relief ("Compl.") [Dkt. No. 1] ¶¶ 49, 51. The purpose of these grants is to "support . . . disaster preparedness, mitigation, and recovery efforts throughout the Nation." *Id.* ¶ 51. "[V]irtually every state and local government across the country[] rely on these federal grants to support their emergency-management functions." *Id.* ¶ 52. Government entities may receive grant funding "directly, by executing grant agreements with FEMA or other components of DHS, and indirectly, as subgrantees of funding from the States." *Id.*

Upon distribution of a federal grant, recipients may "use the funding for a wide range of activities that directly advance the purposes for which Congress established the grant programs." *Id.* ¶ 55. For DHS and FEMA grants, these include "emergency management training and enhancing the technology on which emergency operation centers operate, . . . building out public-alert communications systems and supporting community preparedness, [and] purchasing equipment . . . on which first responders and other emergency response operations rely." *Id.*

At issue in this case are nine "grants or subgrants under . . . programs administered by FEMA," which plaintiffs "have received or been awarded, or anticipate receiving or being awarded." *Id.* ¶ 65. I summarize them below.

A. Emergency Management Performance Grant Program (“EMPG”)

The EMPG is a grant distribution program created by FEMA in 2003 and codified by Congress under 6 U.S.C. § 762. *Id.* ¶ 69. The purpose of the EMPG program is to provide “federal funding, passed through the States, to assist state, local, tribal, and territorial emergency management agencies in implementing FEMA’s National Preparedness System (a systematic process for developing national preparedness). *Id.* ¶ 67. FEMA allocates such funding to both States and local governments who are “developing or enhancing emergency management planning activities, emergency operations plans, public alerts and warning systems, emergency response coordination among agencies, mutual aid systems, shelter and evacuation preparedness, and disaster recovery.” *Id.* ¶ 68. While States are the original recipients of EMPG funding, States may “allow subrecipients to apply for a share” of the funding. *Id.* ¶ 71.

EMPG grants include a “performance period” of two or more years, meaning that “an award in one fiscal year usually allows receiving [grantees] to continue to support program activities beyond the fiscal year in which the funding is awarded.” *Id.* ¶ 76. In its fiscal year (“FY”) 2025 Notice of Funding Opportunity (“NOFO”), FEMA notified recipients of EMPG funding that it “must comply with the DHS Standard Terms and Conditions.” *Id.* ¶ 77.

B. Homeland Security Grant Program (“HSGP”)

The HSGP is composed of “several discrete subprograms,” two of which are at issue—the State Homeland Security Program (“SHSP”) and the Urban Area Security Initiative (“UASI”) grant programs. *Id.* ¶ 81. FEMA provides a consolidated NOFO for all programs within the HSGP. *Id.* ¶ 82. Its FY 2025 NOFO announced “a total of $1.008 billion in HSGP funding, including $373.5 million in [SHSP] funding and $553.5 million in [UASI] funding.” *Id.* ¶ 83. Recipients of the HSGP funding, including its subprograms, were required upon acceptance to “comply with the DHS Standard Terms and Conditions.” *Id.* ¶ 84.

i. **SHSP Grant Program**

The SHSP grant system “provide[s] federal funding to States—and, through them, to local governments—to build the necessary capacity to prevent, prepare for, protect against, and respond to acts of terrorism.” *Id.* ¶ 87. SHSP funding originates with the USA PATRIOT Act in 2001; the program was later codified by Congress at 6 U.S.C. §§ 603, 605–09. *Id.* ¶ 88. States, and, through them, local governments, both may receive SHSP funding. *Id.* Upon receiving a SHSP grant, recipients may use their funds "for uses permitted by statute, such as enhancing homeland security, conducting training exercises, upgrading equipment, or paying salaries." *Id.* ¶ 89 (citing 6 U.S.C. § 609(a)). SHSP grants "typically remain[] open for three years," allowing grantees and subgrantees "to continue to support program activities in subsequent years." *Id.* ¶ 98.

ii. UASI Program

The UASI grant system is used to "ensure States—and, through them, local government entities serving high-risk urban areas—build and maintain the capacity to prevent, prepare for, protect against, and respond to acts of terrorism." *Id.* ¶ 100. UASI funding has been available to States, and, through them, local governments, since 2003; the program was later codified at 6 U.S.C. §§ 603–04, 606–09. *Id.* ¶ 101. UASI grants are distributed to States, who then are tasked with "provid[ing] . . . eligible urban area[s] in that State with at least 80% of the grant funds." *Id.* ¶ 105 (citing 6 U.S.C. § 604(d)(2)(A)). These urban areas must use the funding for "permitted purposes, including enhancing homeland security, conducting training exercises, upgrading equipment, or paying salaries." *Id.* ¶ 104 (citing 6 U.S.C. § 609(a)). Any leftover funds held by States must be "expended on items, services, or activities that benefit the high-risk urban area or areas." *Id.* ¶ 105.

C. Hazard Mitigation Grant Program ("HMGP")

Under the Stafford Act, the federal government may contribute "up to 75 percent of the cost of hazard mitigation measures" that "substantially reduce the risk of, or increase resilience to, future damage, hardship, loss, or suffering in any area affected by a major disaster." *Id.* ¶ 119; 42 U.S.C. § 5170c(a). This has been expanded with the HMGP, which provides "federal funding to state, local, tribal, and territorial governments to develop hazard mitigation plans and rebuild their communities after a Presidential major disaster declaration." Compl. ¶ 120. Such projects may include retrofitting facilities, installing flood barriers, building shelters in disaster-prone areas, stabilizing slopes, and developing or improving warning systems. *Id.* ¶ 121.

Unlike other grant programs, HMGP funding "do[es] not necessarily operate neatly on a predic[t]able, fiscal-year basis"; rather, its funding "often follows the occurrence of disasters, emergencies, and other events." *Id.* ¶ 123. Upon declaration of a "major disaster," States can apply for HMGP funding. *Id.* States will typically review project applications from local jurisdictions and choose which to submit to FEMA for funding approval. *Id.* All funding requests must be submitted to FEMA within 15 months of the date of disaster declaration. *Id.*

D. Transit Security Grant Program ("TSGP")

The TSGP provides funding to transit agencies "to protect critical transportation infrastructure and the travelling public from terrorism, and to increase infrastructure resilience in our nation's public transportation systems." *Id.* ¶ 125; *see* 6 U.S.C. § 1135(a)(1). DHS fields applications from public transportation agencies for TSGP funding and must "select the recipients of grants based solely on risk." *Id.* ¶ 126 (quoting 6 U.S.C. § 1135(c)(2)).

E. Staffing for Adequate Fire and Emergency Response ("SAFER") Program

The SAFER program was established by Congress to "provide funding directly to local fire departments (among other entities) to help them increase or maintain the number of trained, front-line firefighters available to serve their communities." *Id.* ¶ 132. Specifically, SAFER seeks to "enhance local fire departments' abilities to comply with staffing, response, and operational standards established by the National Fire Protection Association, including assisting fire departments with 'attain[ing] 24-hour staffing to provide adequate protection from fire and fire-related hazards." *Id.* ¶ 133 (citing 15 U.S.C. § 2229a(a)(1)(A)). SAFER grants are awarded by FEMA "on a competitive basis through a neutral peer review process." *Id.* (citing 15 U.S.C. § 2229a(a)(1)(G)). The FY 2050 SAFER NOFO requires recipients of funding to "comply with DHS Standard Terms and Conditions in effect at the time the award is issued." *Id.* ¶ 134.

F. Assistance to Firefighters Grant ("AFG")

The AFG was established by Congress to "ensure that firefighters and other first responders can obtain critical equipment, training, and other resources necessary to protect the public and emergency personnel from fire and fire-related hazards." *Id.* ¶ 138. To obtain AFG funding, fire departments must consult the "chief executives of the States in which the recipients are located." *Id.* awards are granted "on a competitive basis," with the amount of funding being "related to population size." *Id.* (citing 15 U.S.C. § 2229(c)(1)–(2)). FEMA awards AFG funding "on a rolling basis." *Id.* ¶ 139. The FY 2024 AFG NOFO requires recipients to "comply with the DHS Standard Terms and Conditions in effect as of the date of the federal award." *Id.*

G. Fire Prevention and Safety ("FP&S") Grant

Congress established the FP&S Grant program, codified at 15 U.S.C. § 2229(d), to "assist[] fire prevention programs and support[] firefighter health and safety research and development." *Id.* ¶ 145. Like the AFG program, eligible fire departments may apply for funding, which is awarded on a "competitive basis." *Id.* Recipients of a FP&S grant may use the funding to "support public education campaigns, enforce fire codes, and promote compliance with fire safety standards." *Id.* (citing 15 U.S.C. § 2229(d)(3)). FP&S grants are awarded by FEMA on a rolling basis. *Id.* ¶ 146. Currently, recipients of a FP&S grant must "comply with the DHS Standard Terms and Conditions in effect as of the date of the federal award." *Id.*

H. Port Security Grant Program ("PSGP")

The PSGP "provides federal funding to state, local, territorial, and private-sector partners to help protect critical port infrastructure from terrorism and other emergencies, enhance maritime domain awareness, improve port-wide maritime security risk management, and maintain or reestablish maritime security mitigation protocols that enhance port recovery and resiliency capabilities." *Id.* ¶ 149. This program was originally created by the Maritime Transportation Security Act of 2002 and was later codified at 46 U.S.C. § 70107. *Id.* ¶ 150. Eligible port authorities and local governments may apply to FEMA for PSGP funding. *Id.* ¶ 151. Upon receiving PSGP funding, the recipient may use the money for "planning, operational activities, equipment and capital projects, training and awareness campaigns, and maintenance and sustainment." *Id.* The FY 2025 PSGP NOFO requires funding recipients to "comply with the DHS Standard Terms and Conditions in effect as of the date of the federal award." *Id.* ¶ 154.

I. Securing the Cities ("STC") Grant

Under 6 U.S.C. § 596b(a), the STC Grant program seeks to "enhance the ability of the United States to detect and prevent terrorist attacks and other high-consequence events utilizing nuclear or other radiological materials that pose a high risk to homeland security in high-risk urban areas." *Id.* ¶ 156. The STC program supports "State, local, Tribal, and territorial governments in designing and implementing, or enhancing existing, architectures for coordinated and integrated detection and interdiction of nuclear or other radiological materials that are out of regulatory control." *Id.* ¶ 157 (citing 6 U.S.C. § 596b(b)(1)). STC was codified by Congress as part of the Countering Weapons of Mass Destruction Act of 2018. *Id.* ¶ 158.

J. National Urban Search and Rescue ("US&R") Grant

The US&R Response System "provides funding to ensure adequate management, training, exercise, procurement (vehicle and equipment), and storage and maintenance for the 28 national task forces staffed and equipped to assist States and local governments, tribes, and territories to conduct around-the-clock search-and-rescue operations following a Presidentially declared major disaster or emergency under the Stafford Act." *Id.* ¶ 160. FEMA provided a FY 2025 US&R NOFO in late July 2025. *Id.* ¶ 161.

2. THE TRUMP ADMINISTRATION BEGINS TO DIRECT AGENCIES TO GRANT FUNDING WITH ANTI-DEI AND DEIA CONDITIONS.

Since taking office in January 2025, President Trump has issued numerous executive orders that "direct[] federal agencies to participate in[] a coordinated effort to impose his political agenda on state and local governments and other grantees across the country." *Id.* ¶ 164. These orders particularly attack "diversity, equity, and inclusion" ("DEI") and "diversity, equity, inclusion, and accessibility" ("DEIA") programs and policies that many government entities have adopted. *Id.*[4] As explained further below, in his Administration's view, DEI and DEIA programs

[4] Plaintiffs point to numerous executive orders signed by President Trump that deal with DEI, DEIA, or other adjacent equity-based policies or programs. *See* Compl. ¶ 164 n.21. These include Executive Order 14332 ("Improving Oversight of Federal Grantmaking"), 90 Fed. Reg. 38,929, 38,931 (Aug. 7, 2025); Executive Order 14190 ("Ending Radical Indoctrination in K-12 Schooling"), 90 Fed. Reg. 8,853, 8,853–55 (Jan. 29, 2025); Executive Order 14173 ("Ending Illegal Discrimination and Restoring Merit-Based Opportunity"), 90 Fed. Reg. 8,633 (Jan. 21, 2025); Executive Order 14151 ("Ending Radical and Wasteful Government DEI Programs and Preferencing"), 90 Fed. Reg. 8,339, 8,340 (Jan. 20, 2025); Executive Order 14168 ("Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government"), 90 Fed. Reg. 8,615, 8,616 (Jan. 20, 2025); Executive Order 14148 ("Initial Rescission of Harmful Executive Orders and Actions"), 90 Fed. Reg. 8,237 (Jan. 20, 2025). Because not all executive orders are relevant to this case, I do not describe each in detail. Each relevant order is discussed in greater detail in Section II.B.2, *supra*.

violate anti-discrimination laws and cannot be supported or utilized by federal, state, or local governments. *Id.* This perspective has been further supported by agencies within the Executive Branch—in the Department of Justice, for example, Attorney General Pamela Bondi ("Bondi") issued a memorandum titled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" that echoed the executive orders' views of DEI and DEIA. *Id.* ¶ 165.

A. DHS Revises its Fiscal Year 2025 Grant Terms and Conditions.

In response to these executive orders, DHS revised the "standard terms and conditions applicable to Fiscal Year 2025 grants, cooperative agreements, fixed amount awards, and other types of federal financial assistance." *Id.* ¶ 168. One of these revisions is the "FY 2025 DHS Terms and Conditions Version 3 Dated April 18, 2025" (the "Standard DHS Terms"). *Id.* ¶ 169. The Standard DHS Terms contain three sets of conditions "that did not exist in any version of the DHS Terms and Conditions issued before January 20, 2025"—the "Discrimination Condition," the "Immigration Conditions," and the "EO Condition" (collectively, the "DHS Conditions"). *Id.* ¶ 170 (citing Standard DHS Terms ¶¶ 171–73).

1. The Discrimination Condition[5]

Section C.XVII of the Standard DHS Terms sets out the "Discrimination Condition" attached to recipients of federal grant funding. *Id.* ¶ 171. Specifically, the Discrimination Condition states:

> Recipients must comply with all applicable Federal anti-discrimination laws material to the government's payment decisions for purposes of 31 U.S.C. § 372(b)(4).
> (1) Definitions. As used in this clause –
> (a) DEI means "diversity, equity, and inclusion."
> (b) DEIA means "diversity, equity, inclusion, and accessibility."
> (c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025.
> (d) Federal anti-discrimination laws mean Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin.
> (e) Illegal immigrant means any alien, as defined in 8 U.S.C. §

[5] Defendants maintain that the "Discrimination Condition" should really be called the "Anti-Discrimination Condition," as its "express purpose is to end any types of discrimination to the maximum extent allowed by law." Oppo. at 3. Because the "Discrimination Condition" properly encapsulates both discrimination and anti-discrimination, I choose to retain plaintiffs' original language.

1101(a)(3), who has no lawful immigration status in the United States.

(2) Grant award certification.

(a) By accepting the grant award, recipients are certifying that:

(i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws; and

(ii) They do not engage in and will not during the term of this award engage in, a discriminatory prohibited boycott.

(iii) [*Provision omitted and included within Immigration Conditions, supra.*]

(3) DHS reserves the right to suspend payments in whole or in part and/or terminate financial assistance awards if the Secretary of Homeland Security or her designee determines that the recipient has violated any provision of subsection (2).

(4) Upon suspension or termination under subsection (3), all funds received by the recipient shall be deemed to be in excess of the amount that the recipient is determined to be entitled to under the Federal award for purposes of 2 C.F.R. § 200.346. As such, all amounts received will constitute a debt to the Federal Government that may be pursued to the maximum extent permitted by law.

2. The Immigration Conditions

Section C.IX and Subsection C.XVII(2)(a)(iii) of the Standard DHS Terms set out what plaintiffs describe as the "Immigration Conditions." *Id.* ¶ 172. Plaintiffs summarize the Immigration Conditions as follows:

a. *The Information Sharing Condition* (§ C.IX.1.a): Grant recipients and subrecipients "must comply with the requirements of 8 U.S.C. §§ 1373 and 1644," which "prohibit restrictions on information sharing by state and local government entities with DHS regarding the citizenship or immigration status, lawful or unlawful, of any individual."

b. *The Compliance Condition* (§ C.IX.1.b): Grant recipients and subrecipients "must comply with other relevant laws related to immigration, including prohibitions on encouraging or inducing an alien to come to, enter, or reside in the United States in violation of law, 8 U.S.C. § 1324(a)(1)(A)(iv), prohibitions on transporting or moving illegal aliens, 8 U.S.C. § 1324(a)(1)(A)(ii), prohibitions on harboring, concealing, or shielding from detection illegal aliens, 8 U.S.C. § 1324(a)(1)(A)(iii), and any applicable conspiracy, aiding or abetting, or attempt liability regarding these statutes."

c. *The Cooperation Condition* (§ C.IX.1.c): Grant recipients and subrecipients must "honor requests for cooperation, such as participation in joint operations, sharing of information, or requests for short term detention of an alien pursuant to a valid detainer."

d. *The Access Condition* (§ C.IX.1.d): Grant recipients and subrecipients must "provide access to detainees, such as when an immigration officer seeks to interview a person who might be a removable alien."

e. *The Publicization Condition* (§ C.IX.1.e): Grant recipients and subrecipients must "not leak or otherwise publicize the existence of an immigration enforcement operation."

f. *The Certification Condition* (§ C.IX.2): Grant recipients "must certify under penalty of perjury pursuant to 28 U.S.C. § 1746 and using a form that is acceptable to DHS, that [they] will comply with the requirements of this term," meaning all of Section C.IX, and must also "require any subrecipients or contractors to certify in the same manner that they will comply with this term prior to providing them with any funding under this award."

g. *The Materiality Condition* (§ C.IX.3): Grant recipients must "agree[] that compliance with this term is material to the Government's decision to make or continue with this award and that the Department of [H]omeland Security may terminate this grant, or take any other allowable enforcement action, if the recipient fails to comply with this term."

h. *The Non-Incentivizing Condition* (§ C.XVII(2)(a)(iii)): "By accepting the grant award, recipients are certifying that: . . . They do not, and will not during the term of this award, operate any program that benefits illegal immigrants or incentivizes illegal immigration," and agree that DHS has the "right to suspend payments in whole or in part and/or terminate financial assistance awards if the Secretary of Homeland Security or her designee determines that the recipient has violated" this certification.

Id.[6]

3. The EO Condition

Section C.XXXI of the Standard DHS Terms sets out what plaintiffs refer to as the "EO Condition." *Id.* ¶ 173. The EO Condition mandates that "[r]ecipients [of funding] must comply with the requirements of Presidential Executive Orders related to grants (also known as federal assistance and financial assistance), the full text of which are incorporated by reference." *Id.* (citing Compl. Ex. A FY 2025 DHS Standard Terms and Conditions [Dkt. No. 1-1]).

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[6] Plaintiffs do not move at this time for relief from the Immigration Conditions, as they were found arbitrary and capricious in *Illinois v. Federal Emergency Management Agency*, C.A. No. 25-206 WES, 2025 WL 2716277 (D.R.I. Sept. 24, 2025). I also prohibited defendants from applying civil immigration conditions to DHS grants in *City & County of San Francisco v. Trump*, 783 F. Supp. 3d 1148 (N.D. Cal. 2025). I include the condition here to indicate the broad scope of change implemented by the Challenged DHS Conditions.

United States District Court
Northern District of California

4. The Civil Rights Conditions

In addition to the Challenged DHS Conditions, plaintiffs cite "several [other] provisions that require recipients of grant funding to comply with certain specified civil rights and antidiscrimination laws," which "have appeared in prior years' terms and conditions." *Id.* ¶ 174. These conditions (collectively, the "Civil Rights Conditions") are summarized by plaintiffs as follows:

i. Section C.III, entitled "Age Discrimination Act of 1975," requires recipients to "comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (codified as amended at Title 42, U.S. Code § 6101 *et seq.*)."

ii. Section C.IV, entitled "Americans with Disabilities Act of 1990," states that "Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101– 12213)."

iii. Section C.VII, entitled "Civil Rights Act of 1964 – Title VI," requires recipients to "comply with the requirements of Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified as amended at 42 U.S.C. § 2000d *et seq*.)," including "DHS implementing regulations for the Act [that] are found at 6 C.F.R. Part 21" and, as applicable, "FEMA's implementing regulations at 44 C.F.R. Part 7."

iv. Section C.VIII, entitled "Civil Rights Act of 1968," requires recipients to "comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90284 (codified as amended at 42 U.S.C. § 3601 *et seq.*), . . . as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100," including with respect to "new multifamily housing with four or more dwelling units" as described in "24 C.F.R. Part 100, Subpart D."

v. Section C.XIV, entitled "Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX," requires recipients to "comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (codified as amended at 20 U.S.C. § 1681 *et seq.*)," including "DHS implementing regulations [that] are codified at 6 C.F.R. Part 17" and, as applicable, "FEMA's implementing regulations at 44 C.F.R. Part 19."

vi. Section C.XVI, entitled "Equal Treatment of Faith-Based Organizations," states: "It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other

> applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs."
>
> vii. Section C.XXIV, entitled "Limited English Proficiency (Civil Rights Act of 1964, Title VI)," states: "Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: https://www.dhs.gov/guidance-published-help-department-supportedorganizations-provide-meaningful-access-people-limited and additional resources on http://www.lep.gov."
>
> viii. Section C.XXXIII, entitled "Rehabilitation Act of 1973," states: "Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (codified as amended at 29 U.S.C. § 794)."

Id.

B. Defendants Adopt the Challenged DHS Conditions.

Around August 20, 2025, defendants "adopted and published the FEMA Preparedness Grants Manual, FM-207-23-001 (the "Grants Manual")." *Id.* ¶ 176. The Grants Manual recognized that much of its content was "new or refreshed . . . for Fiscal Year (FY) 2025, mainly to align with updated standard language." *Id.* ¶ 177. Specifically, the Grants Manual demands that recipients "comply with the DHS Standard Terms and Conditions in effect as of the date of the federal award," and reiterates the EO condition "verbatim." *Id.* ¶ 178. Accordingly, defendants began attaching the Discrimination and EO Conditions to "all of their grant awards, thereby conditioning disbursement of grant funding to all direct grantees and subgrantees on their agreement to those conditions." *Id.* ¶ 181. These conditions are now attached to "all of FEMA's Preparedness Grants, including HSGP-SHSP, HSGP-UASI, TSGP, PSGP, and EMPG." *Id.* ¶ 182.

3. PLAINTIFFS ALL RECEIVE OR EXPECT TO RECEIVE GRANTS THAT INCLUDE THE DISCRIMINATION AND EO CONDITIONS.

Plaintiffs are a collective of cities, counties, municipalities, and local agencies that are "collectively responsible for the safety and well-being of tens of millions of residents." *Id.* ¶ 50. The grant programs described above form the basis of their claims. Each plaintiff has submitted declarations describing how their policies and practices are at odds with the Discrimination Condition and EO Condition attached to their federal grants. I summarize them below.

A. Alameda

The City of Alameda is located in the San Francisco Bay Area and is home to over 75,000 residents. Declaration of Jeniffer Ott ("Ott Decl.") [Dkt. No. 19-11] ¶ 3. Because Alameda is located on an island, the city faces unique threats from rising sea levels, increased flooding, and soft-story buildings prone to damage during earthquakes. *Id.* ¶¶ 6–7. Alameda also contains "a significant amount of critical infrastructure," including four fire stations, a police station, Oakland International Airport, the Port of Oakland, the United States Coast Guard Base Alameda, and underwater tunnels connecting the city to Oakland. *Id.* ¶ 4.

In the past year, Alameda applied for or has been awarded grants by FEMA. On August 6, 2024, Alameda was awarded a AFG program grant in the amount of $876,633.45 to "help firefighters and other first responders obtain critically needed resources necessary for protecting the public and emergency personnel from fire and related hazards." *Id.* ¶ 8. The AFG is currently funding eight members of the City to attend medic school. *Id.* Further, Alameda applied for, and expects to receive, a SAFER grant in the amount of $1,861,336.65 "to fund four firefighter positions over a three-year period." *Id.* ¶ 9. This SAFER grant is conditioned on the DHS Conditions. *See id.* Alameda is also a subrecipient to a US&R grant issued to Oakland in the amount of $1,378,311 on September 26, 2025. *Id.* ¶ 11. The US&R grant, like the SAFER grant, contains the DHS Conditions at issue in this case. *Id.* Alameda similarly applied for $7,237,014.75 in HMGP funding in August 2023; this funding is still under review by FEMA but would likely contain the DHS Conditions if approved. *Id.* ¶¶ 13–15. Finally, Alameda applied for $50,000,000 from the Building Resilient Infrastructure and Communities ("BRIC") program, which was dissolved in April 2025. *Id.* ¶¶ 16–17. Should the program be reactivated, any grant to Alameda would likely contain the DHS Conditions. *Id.* ¶ 18.

Alameda contends that the DHS Conditions will cause irreparable harm by forcing it to either "accept those conditions or lose access to approximately $61,043,170.00 in DHS/FEMA funding." *Id.* ¶ 19. This would result in "slower response times for both fires and medical emergencies," "[s]taffing reductions," an inability to retrofit buildings for earthquakes, and potential "loss of Airport function" due to flooding. *Id.* ¶¶ 20–22.

B. Bellingham

The City of Bellingham is a city in coastal Washington that is home to approximately 100,000 resident. Declaration of William Hewett ("Hewett Decl.") [Dkt. No. 19-12] ¶ 5. Bellingham is "prone to extreme weather events such as severe flooding, wildfires, earthquakes, and tsunamis." *Id*. The Bellingham Fire Department Office of Emergency Management ("OEM") is responsible for coordinating the county-wide Natural Hazards Mitigation Plan. *Id.* The OEM also creates training and exercises relating to natural disasters and terrorism events. *Id.* Similarly, the Bellingham Fire Department covers eight fire stations within the city and provides fire and emergency services. *Id.*

This year, Bellingham Fire Department received $58,000 in annual EMPG funds "to support the[ir] emergency management program," as well as $810,000 in AFG funding to support fire and emergency services operations. *Id.* ¶ 6. These programs helped Bellingham replace personal protective equipment during the COVID-19 pandemic as well as replacing all Self-Contained Breathing Apparatuses to help firefighters "breathe clean air while entering burning buildings." *Id*. Additionally, Bellingham is the recipient of a FEMA Public Assistance Grant, covering 90% of a $4.5 million project to replace a bridge destroyed by flooding in 2021. *Id.* ¶ 7. For the upcoming fiscal year, Bellingham has applied for (or will apply for) a $44,661 EMPG grant, a $133,000 AFG grant, and a $2,000,000 SAFER grant. *Id.* ¶¶ 8–12. Each grant is expected to include the DHS Conditions. *See id.*

Bellingham maintains that attaching the DHS Conditions to these grants would irreparably harm the City. *See id.* ¶¶ 13–14. The City heavily relies on EMPG funds to sustain their emergency operations, as they constitute 10% of the OEM's budget. *Id.* ¶ 13. Without this funding, the Bellingham Fire Department would "likely need to shut down the[ir] joint City-County Emergency Operations Facility, which would lead to less coordination during a disaster." *Id.* Bellingham is also experiencing a budget deficit of roughly $4.5 million dollars and does not have any "extra funding available to replace critically needed equipment" and services. *Id.* ¶ 14.

C. Berkeley

The City of Berkeley is located in Alameda County, California and has a population of over 125,000 residents. Declaration of Paul Buddenhagen ("Buddenhagen Decl.") [Dkt. No. 19-13] ¶ 4. Berkeley is located in an "earthquake-prone area on the San Andreas Fault System with a history of earthquakes that have caused significant structural damage." *Id.* It is also highly susceptible to wildfires. *Id.*

Berkeley currently is receiving approximately $12.5 million in DHS and FEMA funding to support its fire and seismic safety programs. *Id.* ¶ 6. This includes a $4.7 million HMGP grant, used to "retrofit seismically vulnerable buildings" in the City, and $800,000 in AFG funding to "hire two full-time experts in behavioral health and nutrition to support firefighter training and wellbeing." *Id.* ¶¶ 7–8. Berkeley has applied to renew these programs, seeking $3.75 million and $800,000 in additional funding, respectively. *Id.* ¶¶ 9–10. The City has also applied for $6.4 million in HMGP funding to "establish a home hardening and defensible space program" to mitigate wildfire damage, and $16.5 million in HMGP funding to seismically retrofit "two historic and critical buildings." *Id.* ¶¶ 11–12. Berkeley anticipates that these new grants will all contain the DHS Conditions. *Id.* ¶ 13.

Berkeley contends that it would be forced to either accept the DHS Conditions or lose approximately $27 million in pending grant applications. *Id.* ¶ 14. Loss of such funding would "impede the City's ability to mitigate serious threats . . . posed by earthquakes and wildfires," as well as result in a loss of many critical programs. *Id.* ¶¶ 15–16. Because the City is facing an approximately $27 million structural budget deficit, Berkeley concludes that the loss of FEMA funds "may force [the City] to reduce staffing levels," which would "impact the City for years to come." *Id.* ¶¶ 16–17.

D. Culver City

The City of Culver City is located in Los Angeles County. Declaration of John Nachbar ("Nachbar Decl.") [Dkt. No. 19-14] ¶ 3. Culver City contains a "full-service [fire] department that is responsible for providing professional fire protection and life safety services to [the City]." *Id.* ¶ 4. This year, Culver City, through the fire department, received $32,273 in UASI funding,

$2,375 in SHSP funding, and $6,876 in EMPG funding. *See id.* ¶ 5. These grants are meant to provide "professional fire protection and life safety services to Culver City." *Id.* ¶ 3. Culver City also applied for an AFG grant but has not heard back from FEMA. *Id.* ¶ 4. The City also anticipate receiving $3,000 in SHSP and UASI grants during the 2025 Fiscal Year, which they expect will contain the DHS Conditions. *Id.* ¶ 5.

Culver City maintains that it would be forced to either accept the DHS Conditions or lose at least $3,000 in DHS and FEMA funding, "and possibly more in future fiscal years." *Id.* ¶ 7. This will impact the City's "ability to prepare for emergencies" and "provide adequate staffing," as the City is currently facing a structural deficit. *Id.*

E. King County

King County is located in Washington State and is home to approximately 2.3 million residents. Declaration of Brendan McCluskey ("McCluskey Decl.") [Dkt. No. 19-15] ¶ 3. Due to its geography and weather, King County is particularly "vulnerable to events such as major storms, landslides, flooding, wildland-urban fires, and other emergencies that may critically impact residents." *Id.* In addition, King County is designated a "high threat" jurisdiction for terrorist activity by the DHS, requiring additional emergency preparation. *Id.* ¶ 4. Because of these threats, the King County OEM relies on EMPG and HSGP funding to support its public safety efforts. *Id.* ¶ 8. OEM expects to receive approximately $163,342 and $1.4 million in EMPG and HSGP grants during the 2025 Fiscal Year, respectively. *Id.* ¶¶ 10, 14. King County also serves as the core member of the UASI Urban Area Working Group, represented by the King County OEM. *Id.* ¶ 15. As the core member, the OEM oversees grant funding for projects "to benefit the entire UASI region," which includes Pierce County, Snohomish County, as well as the cities of Seattle and Bellevue, Washington (both located in King County). *See id.*

King County maintains that it would be forced to either accept the DHS Conditions or lose access to over $1.6 million in DHS and FEMA funding "slated for projects that enhance . . . [infrastructure], election security plans and procedures, . . . cybersecurity . . . [and] other anti-terrorism planning, preparedness, and operational work." *Id.* ¶ 16. King County also points out that it is hosting the upcoming FIFA World Cup in 2026, which will attract "750,000 unique visitors" to the region, demonstrating the need for funding to coordinate public safety. *Id.* ¶ 21.

F. Los Angeles

Los Angeles is the second most populated city in the United States, home to an estimated 3.8 million residents. Declaration of Yolanda Chavez ("Chavez Decl.") [Dkt. No. 19-17] ¶ 3. The city is particularly vulnerable to "wildfires, flooding, mudslides, earthquakes, and extreme heat." *Id.* Additionally, with its large population, critical infrastructure, and high-profile international events (such as the 2026 World Cup and 2028 Summer Olympics), Los Angeles is a target for terrorist activity. *Id.*

Los Angeles expects to receive at least $56,600,000 in DHS funding during the 2025 Fiscal Year. *Id.* ¶ 4. First, the City has already been awarded $6,677,557.35 in carry-forward funding through the STC program. *Id.* ¶¶ 5–6. This award supports "radiation and nuclear detection equipment, training, and drills/exercises for regional partners in law enforcement, fire service, and public health." *Id.* ¶ 7. Additionally, the Los Angeles Fire Department (the "LAFD") has received $1,393,311 in funding through the US&R program for the 2025 Fiscal Year. *Id.* ¶ 8. This US&R grant covers salaries, training, supplies, and equipment for four employees to assist in search and rescue efforts during catastrophic disasters. *Id.* ¶ 9. The LAFD has also received a $4,204,414.04 SAFER grant, which provides "urgent staffing (12 firefighters)" in an area found to be a "gap in fire security." *Id.* ¶ 10. The Los Angeles Police Department (the "LAPD") similarly has received $277,500 in PSGP funding, meant for the maintenance and repair of equipment. The City has also applied for EMPG, UASI, and SHSP funding from FEMA, and expects to receive $450,000-500,000, $38,664,255, and $257,000, respectively. *Id.* ¶¶ 15–20. Each of these grants are expected to contain the DHS Conditions at issue in this case.

Los Angeles maintains that the City is forced to either accept the DHS Conditions or lose access to tens of millions of dollars in funding to secure public safety. *Id.* ¶ 22. Loss of funding would not only impact its emergency programs in Los Angeles, it contends, but also coordinated efforts between other municipalities in the greater Southern California region. *Id.* ¶ 23.

G. Los Angeles County

The County of Los Angeles is the nation's largest county, home to over 10 million residents. Declaration of Mason Matthews ("Matthews Decl.") [Dkt. No. 19-18] ¶ 3. The Los Angeles County Consolidated Fire Protection District ("LA County Fire") is a special fund within the County's budget and provides 24-hour emergency services to over four million residents. *Id.* ¶¶ 2, 4. Los Angeles County, along with LA County Fire, receive over $5.33 billion in federal grants each year to assist with emergency management and public safety. *Id.* ¶ 5. Such funding was particularly important this year due to the Palisades Fire, Eaton Fire, Hurst Fire, Kenneth Fire, and other fires (collectively, the "January 2025 Fires") that devastated the region. *Id.* ¶ 6.

Los Angeles County and LA County Fire collectively have over $500 million in pending DHS and FEMA grants that "strengthen its capacity to prevent, prepare for, protect against, respond to, and recover from, acts of terrorism and other catastrophic events." *Id.* ¶ 7. First, Los Angeles County has approximately $482 million in pending grants as a result of the January 2025 Fires and the County's recovery efforts. *Id.* ¶ 13. These grants have not yet been awarded, and the County is concerned that the DHS Conditions may be attached to the granting should they be distributed soon. *Id.* Los Angeles County also anticipates being a subrecipient of $3.3 million in SHSP grant funding from California, as well as $10,950,530 in UASI funding. *Id.* ¶¶ 9–10. It also expects $1,802,009 in EMPG funding, which will enhance the County's emergency management capabilities. *Id.* ¶ 11. Other anticipated grants include $2,887,500 in HSGP Regional Threat Assessment Center funding, $751,276.32 in PSGP funds, $2,886,186.60 in AFG funds, and $1,488,311 in US&R funds. *Id.* ¶¶ 12–20. Each of these grants are meant to support critical infrastructure and programs within the County and are expected to contain the DHS Conditions at issue in this case. *See id.*

Los Angeles County maintains that it will be forced to either accept the DHS Conditions or lose at least $500 million in DHS and FEMA funding. *Id.* ¶ 21. This would result in the loss of critical infrastructure and dozens of jobs. *Id.* ¶¶ 23–25. This harm will be particularly salient due to the January 2025 Fires, as the County's resources are currently "depleted." *Id.* ¶ 22.

H. Marin County

The County of Marin is located in the San Francisco Bay Area, directly north of San Francisco. Declaration of Steven Torrence ("Torrence Decl.") [Dkt. No. 19-19] ¶ 3. Its geography—including "rugged, hilly terrain . . . wetlands, streams, and heavily wooded areas"—makes it "extremely prone to natural disasters, including flooding, severe storms, wildfires, and extreme heat events." *Id.* Marin County experiences "at least one federally declared emergency each year with average damage costs valued between $3 and $5 million." *Id.*

Marin County "generally receives between $175,000 to $200,000 in EMPG pass-through funding from [California] each year," which supports the County's emergency operations center, alert and warning enhancements, and staff training. *Id.* ¶ 6. Additionally, Marin County typically receives SHSP funding; in 2024, the County received a $288,000 grant. *Id.* While the County is still waiting to receive the total amount of EMPG and SHSP funding for FY 2025, it has already received approximately $550,000 in HMGP funding to "re-write all of the hazard mitigation plans for the school districts and special districts within the County." *Id.* Marin County is also a member of the North Hub for the Bay Area's UASI program and has historically received funding as a subrecipient. *Id.* ¶ 7. Finally, the County is waiting for approval on a $22 million HMGP grant to support flood control within an unincorporated area of the County. *Id.* ¶ 8.

Marin County maintains that it will be forced to either accept the DHS Conditions or lose at least $15 million in DHS and FEMA funding. *Id.* ¶ 10. Loss of funding would "jeopardize critical emergency operations infrastructure," including maintaining the county's alert and warning system, "regional staff training[,] field exercises and essential equipment for first responders." *Id.* It would also result in "significant economic hardship in the event of a declared emergency," as the County typically incurs "between $3 to $5 million" a year in costs for "disaster response expenses." *Id.* ¶ 12. For example, should Marin County not receive its Hazard Mitigation Grant funding this year, over 4,000 residents "will remain at risk of flooding, jeopardizing the[ir] health, safety, and welfare." *Id.* ¶ 11.

I. Oakland

The City of Oakland is located in the San Francisco Bay Area and is home to almost 450,000 individuals. *See* Declaration of Jestin D. Johnson ("Johnson Decl.") [Dkt. No. 19-20] ¶ 4. The geography of Oakland presents numerous potential threats for the city, including wildfires, floods, and earthquakes. *Id.* ¶¶ 5–10. Over 13% of the population of Oakland live in "high or very high wildlife severity zones," and roughly 35% of all critical facilities in Oakland are located in "wildlife risk areas." *Id.* ¶ 7. These risks are further accentuated by the infrastructure in the city, including Oakland International Airport, which is classified by FEMA as being an extremely high risk "Special Flood Hazard Area." *Id.* ¶ 9.

Oakland currently has over $30 million in active grants with DHS and FEMA; these include $27 million in SAFER funding, $2.5 million in US&R grants, $206,370 in Local Hazard Mitigation Program ("LHMP") grants, $520,000 in PSGP funding, $52,000 as a subrecipient to California's UASI and HSPG grants, and an AFP grant. *Id.* ¶ 11. It also has applied for, and expects to receive, roughly $21 million in funding this year from various DHS and FEMA grants. *Id.* ¶ 13. The Oakland Fire Department ("OFD") has applied for roughly $19 million in SAFER funding this year to "hire 20 additional firefighters" to "address persistent staffing shortages." *Id.* ¶ 14. OFD has also been awarded roughly $1.4 million in US&R funding to assist with "search and rescue, disaster response, and disaster preparedness efforts" in both Oakland and other impacted areas. *Id.* ¶ 15–20. Additionally, OFD has applied for and received a $1.2 million UASI grant to fund five staff members who will be tasked with maintaining public safety and mitigating the risk of terrorist attacks. *Id.* ¶¶ 21–26. Finally, OFD applied for $18,000 in PSGP funds for the FY 2025, to be used to hire a contractor to facilitate training of twelve individuals to operate Fireboats. *Id.* ¶¶ 27–31.

Oakland maintains that it will be forced to either accept the DHS Conditions or lose at least $21 million in DHS and FEMA funding. *Id.* ¶ 37. Because the city is facing "significant financial strain," Oakland asserts it is "not in a position to absorb the loss of federal funding streams without serious impacts to services." *Id.* ¶ 38. For example, should Oakland not receive its $19 million SAFER grant, OFD will not be able to increase staffing, despite already being understaffed, resulting in "slower response times to emergencies" and "fewer personnel [at] each incident." *"Id.* ¶ 39. Loss of the US&R, UASI, and PSGP funding will similarly place Oakland in a "more vulnerable [position] to emergencies." *Id.* ¶¶ 40–44.

J. Palo Alto

The City of Palo Alto is a chartered municipal corporation located in Santa Clara County, California. Declaration of Edward Shikada ("Shikada Decl.") [Dkt. No. 19-21] ¶ 3. Palo Alto is "vulnerable to a range of emergencies[,] including wildfires, earthquakes, severe storms, and homeland security threats." *Id.* It also provides fire and emergency response services to Stanford University, which is located in the city. *Id.*

Palo Alto currently has multiple pending grant applications for FY 2025 funding. *Id.* ¶ 5. First, the City has applied for $406,306.50 in HMGP funding to help "remove about 110 invasive eucalyptus trees that increase the flammability and spread of wildfires and provide an increased level of protection to more than 2400 residential homes and critical infrastructure sites." *Id.* Additionally, it seeks $3,009,055.93 in HMGP funding to retrofit two potable water storage tasks to reduce the risk of damage from earthquakes. *Id.* ¶ 6. It also has applied for $139,688.82 in AFG funding to purchase "automated chest compressors" to improve emergency medical responses. *Id.* ¶ 7. Similarly, it has requested $3,911,327.35 in SAFER funding to help fund seven firefighter positions. *Id.* ¶ 10. Finally, Palo Alto has been awarded $862,681.57 in Public Assistance funding to reimburse costs incurred due to "severe winter storm damage." *Id.* ¶ 10.

Palo Alto maintains that it will be forced to either accept the DHS Conditions or lose at least $12 million in DHS and FEMA funding. *Id.* ¶ 13. Without such support, Palo Alto may be forced to cancel these programs, "leaving the community more vulnerable to earthquakes and wildfires." *Id.* ¶ 15. It would also be "forced to divert scarce resources from other essential services, delay projects, or cancel them entirely." *Id.*

K. Pasadena

The City of Pasadena is a charter city located in Los Angeles County, California, and is home to approximately 138,000 individuals. Declaration of Matthew E. Hawkesworth ("Hawkesworth Decl.") [Dkt. No. 19-22] ¶ 4. Pasadena is located at the base of the San Gabriel Mountains, which presents a "significant risk[] of wildfire"; in fact, the northern and western portions of Pasadena are classified as "Very High Fire Hazard Severity Zones" by the California Department of Forestry and Fire Protection. *Id.* ¶ 5. Unfortunately, the consequence of wildfires have been seen as recently as this January 2025, when the Eaton Fire burned thousands of acres of land, residential neighborhoods, and resulted in civilian fatalities. *Id.* ¶ 6. The fire "destroyed and, in other cases, severely damaged critical infrastructure within and outside Pasadena's jurisdictional borders including its parklands, water facilities, and energy systems." *Id.*

Pasadena currently receives almost $3 million in grants from DHS and FEMA, including an AFG grant in the amount of $319,380, to "assist Pasadena's fire department with funding its firefighting and emergency response activities"; $1.4 million in HMGP funding to "fund seismic upgrades of a city building"; $18,800 in SHSP funding to implement "homeland security strategies against terrorism and catastrophic risks"; and $791,685 in UASI funding to improve the City's "capabilities to prevent, prepare for, protect against, and respond to acts of terrorism." *Id.* ¶¶ 8–12. It also has applied for, and expects to receive, over $9 million in pending AFG, HMGP, SHSP, and UASI grant applications and agreements. *Id.* ¶ 8. Finally, Pasadena has applied for over $36 million in Public Assistance funding for its "remediation efforts relating to the Eaton Fire." *Id.* ¶ 13. It assumes that each pending grant will likely incorporate the DHS Conditions. *Id.* ¶ 14.

Pasadena maintains that it will be forced to either accept the DHS Conditions or lose "millions" in DHS and FEMA funding. *Id.* ¶ 15. A lack of funding would result in the Pasadena Fire Department "devot[ing] a substantial amount of its operating budget funds toward these grant projects, leading to less money to fund vital Fire Department programs and activities." *Id.* ¶ 16. This would "weaken[] its ability to respond to active incidents . . . thereby increasing the risk of harm to the city's residents." *Id.*

L. Petaluma

The City of Petaluma is located in Sonoma County, California, and is home to approximately 60,000 residents. Declaration of Brian Cochran ("Cochran Decl.") [Dkt. No. 19-23] ¶ 3. Sonoma County has experienced numerous wildfires over the past decade; Petaluma has "provided important resources for directly-affected jurisdictions," which have been reimbursed by FEMA pursuant to the California's coordinated emergency response system. *Id.*

Petaluma currently receives $659,695 in DHS and FEMA funding from two grants. *Id.* ¶ 4. First, Petaluma was awarded $637,195 from FEMA's Emergency Operations Center Grant Program to fund the construction of the City's combined police, fire, and emergency operations center facilities. *Id.* ¶ 5. Second, Petaluma anticipates receiving $22,500 in pass-through funding from a Sonoma County HSGP grant, which will be used to "provide funds for disaster preparedness for seniors to help ensure the City's readiness to assist the City's senior populations during emergencies." *Id.* ¶ 6. It is expected that the HSGP grant will contain the DHS Conditions. *Id.* ¶ 7.

Petaluma maintains that it will be forced to either accept the DHS Conditions or lose "critical" DHS and FEMA funding. *Id.* ¶ 9. Lack of Lack of funding would not only impact Petaluma residents through the loss of the new emergency operations facility, but also the greater Sonoma County region, as Petaluma provides "critical . . . mutual aid and evacuee support in regional emergencies." *Id.*

M. Pierce County

Pierce County is the second largest county in the state of Washington, with a population of nearly one million residents. Declaration of Arel Solie ("Solie Decl.") [Dkt. No. 19-24] ¶ 4. Given its unique geography, Pierce County is home to "diverse hazards including floods, wildfires, earthquakes, hazardous materials, extreme weather, and volcanic activity from Mount Rainier that could result in a major lahar mud flow." *Id.* Pierce County is also part of the greater Seattle Metropolitan Area, which is ranked highly for national terrorism risk, given its "many soft targets including stadiums, fairgrounds . . . ferry transportation system[,] [and] a significant number of essential bridges." *Id.*

Pierce County currently receives $19,516,544 in FEMA and DHS grants. which represents "over 50% of [their] emergency management funding." *Id.* ¶ 5. These include $6,522,506 in US&R funding; $1,165,115 in SHSP grants to "lead exercises, mass care, reunification, incident command, active shooter drills . . . and Community Emergency Response Team training"; $671,299 in UASI grants to support "two emergency management staff who lead regional planning efforts" for terrorism and law enforcement needs; $281,957 in EMPG grants to fund "staff [who] support . . . emergency operations"; and $7,477,553 in HMGP grants to support the creation and implementation of the County's Hazard Mitigation Plan. *Id.* ¶¶ 6–11. Additionally, Pierce County expects to receive $49,673 in HMGP funding for "wildlife scoping," $1.2 million in

US&R grants, $473,054 in SHSP grant funding, $2,403,876 in HSGP funding, $308,000 in HMGP funding, and $246,817 in EMPG grant funding. *Id.* ¶¶ 11, 13, 18. The County expects that each of these grants will incorporate the DHS Conditions. *Id.* ¶¶ 19–22.

Pierce County maintains that it will be forced to either accept the DHS Conditions or lose at least $6 million in DHS and FEMA funding. *Id.* ¶ 23. "Pierce County's economic forecast combined with the potential loss of federal funding in several service areas across the country . . . will create significant strain on the county budget if federal funding is not accessible." *Id.* ¶ 24. Additionally, Pierce County "does not have alternate funding options to support" these programs, which "impact those most vulnerable" within the region. *Id.* Rather, Pierce County will face "the loss of funding for critical projects and personnel." *Id.*

N. Sacramento

The City of Sacramento is home to 524,943 residents and is the capital of the state of California. Declaration of Leyne Milstein ("Milstein Decl.") [Dkt. No. 19-27] ¶ 5. Sacramento has been awarded, and has yet to accept, $1.4 million in DHS and FEMA grants, as well as has requested $10 million in DHS and FEMA grants. *Id.* ¶ 6. These include approximately $3 million in UASI grants, to prevent and prepare for "acts of terrorism and other catastrophic events"; and approximately $1.5 million in US&R grants to "fund[] five main administrative roles (two logistics coordinators, an analyst, an administrative technician, and a training manager), in addition to approximately 207 US&R members." *Id.* ¶¶ 7–21. Additionally, Sacramento is waiting for approval of $7,381,313.41 in AFG funding to "provide essential health and wellness services for [Sacramento] firefighters that are either not covered in the City's budget or exceed allocated funding." *Id.* ¶¶ 23–26. Sacramento maintains that any loss of funding would "devastat[e] the City, as it "does not have the budget to absorb the loss of these funds." *Id.* ¶ 30.

O. San Diego

The City of San Diego is home to over 1.4 million residents. Declaration of Gabriel Rubi ("Rubi Decl.") [Dkt. No. 19-28] ¶ 3. "As a coastal city in Southern California with a port, harbor, and border with Mexico, San Diego uniquely faces increased border and national security threats and wildlife risks." *Id.* ¶ 4. San Diego receives funding from numerous DHS and FEMA grant programs, including roughly $13.5 million in active grants. *Id.* ¶¶ 5–6. These include PSGP, AFG, and US&R grants. *Id.* ¶ 5. Additionally, San Diego has applied, or has been awarded but not issued, various other grants during the FY 2025. *Id.* These include $995,011.50 in PSGP funding to "purchase [a] Radiological Nuclear Detection Capable All-Hazards Response Vessel to expand and update their fleet"; approximately $1 million in AFG funding to "outfit two wildland firefighting faller teams and replace equipment that no longer meet current standards"; and $1,378,311 in US&R funding to "cover the salaries of two administrative managers, pay for a series of specialized training sessions and FEMA refresher drills, and fund travel expenses to attend trainings." *Id.* ¶¶ 10, 17, 22.

San Diego contends that it does "not have alternate funding to redirect to" these programs should it lose the DHS and FEMA grants. *Id.* ¶ 23. This would result in the loss of "crucial public safety services that are relied on by the entire San Diego community," as well as "negatively impact[] short- and long-term financial planning." *Id.* at ¶¶ 23–24. Ultimately, the residents of San Diego would bear these costs, as the City would lose its "overall ability to respond to emergencies, risking the lives of San Diegans." *Id.* ¶ 24; *see also* Declaration of Christopher Heiser ("Heiser Decl.") [Dkt. No. 19-29] (outlining the $45 million in DHS and FEMA funding the San Diego Office of Emergency Services receives).

P. San Diego County

The County of San Diego is located in Southern California and is a "hub for military operations, international commerce, and tourism, increasing both its strategic importance and its exposure to potential threats." Declaration of Julie Jeakle ("Jeakle Decl.") [Dkt. No 19-30] ¶ 4. The County also faces "significant disaster risks due to its diverse geography, large population, . . . proximity to international borders . . . catastrophic wildfires, earthquakes, flooding, and severe storms." *Id.*

Because of these threats, San Diego County has relied on federal funding to "prepare for, protect against, respond to, and recover from catastrophic disasters." *Id.* ¶ 5. Last year, the County received over $3.9 million in SHSP, EMPG, and UASI grant funds, which constituted roughly one-third of their OES budget. *Id.* ¶ 7. Specifically, the County received $2.8 million in

SHSP funding to "support salaries and training for emergency response personnel . . . perform[ing] vital preparedness, response, and recovery work." *Id.* ¶¶ 11–13. The County also received $692,978 in EMPG grant funds, which similarly provides salary funding for emergency personnel. *Id.* ¶¶ 17–21. Finally, the County received $396,863 in UASI grant funds, to be used to "procure equipment necessary to respond to hazardous materials incidents," "obtain mass casualty response training and equipment for response teams," and "acquire critical emergency evacuation map books." *Id.* ¶¶ 27–28. This year, San Diego County anticipates receiving, or has already received, $3.1 million in SHSP grant funds, $690,432 in EMPG grant funds, and $933,436 in UASI grant funds. *Id.* ¶¶ 11, 19, 27.

San Diego County maintains that it will be forced to either accept the DHS Conditions or lose at least $4.77 million in DHS and FEMA funding. *Id.* ¶ 33. This loss of grant funding would "significantly hinder [their] ability to implement critical emergency preparedness and response initiatives," which are "essential to advancing . . . capabilities necessary to safeguard life, property, and the region's resilience against evolving threats." *Id.* ¶¶ 33–34. It would also result in "reductions in staffing, equipment, and training that are essential to operational readiness," such as "around-the-clock emergency readiness" to handle emergencies. *Id.* ¶ 35. Additionally, "regional partners who rely on pass-through allocations from the County . . . would also see cuts to essential programs and capabilities, impacting the region's entire emergency response network." *Id.* ¶ 36. This "ripple effect[]" would be especially felt in light of the County's "constrained financial conditions," which could not "absorb the loss of these grant funds within its existing operating budget." *Id.* ¶¶ 36–37.

Q. San Francisco

The City and County of San Francisco is located in Northern California and is one of the nation's largest and most diverse urban centers. Declaration of Kim Bowman ("Bowman Decl.") [Dkt. No. 19-32] ¶ 4. San Francisco is "at risk for multiple disasters and emergencies, including but not limited to earthquakes, tsunamis, fire, severe storms, urban flooding, extreme heat, cold weather, hazardous air quality conditions, or acts of terrorism targeting critical infrastructure." *Id.*

Many critical players reduce the risk of these disasters; each receive significant funding from DHS and FEMA. First, the San Francisco Department of Emergency Management ("DEM") helps plan, prepare, communicate, respond to, and recover from "daily emergencies, large scale citywide events, and major disasters." *Id.* ¶ 2. One of DEM's main roles is to oversee San Francisco's 911 dispatch center and large-scale emergency operations. *Id.* To this end, DEM receives SHSP and EMPG pass-through funding each year from FEMA, which helps the Department prepare and respond to threats. *Id.* ¶¶ 5–6. Last year, DEM received $775,892 in SHSP funding, as well as $269,472 in EMPG funding. *Id.* ¶¶ 6–7. Both awards help fund DEM positions, upgrading technology, creating disaster and emergency preparation programs, and community outreach. *Id.* DEM intends to apply for an additional $267,970 in EMPG funding and $853,526 in SHSP funds this year. *Id.* ¶¶ 9–10. Without this funding, DEM would be forced to "lay off workers and reduce services," as San Francisco is experiencing significant financial strain. *Id.* ¶¶ 11–12. This possibility is "more than hypothetical," as DEM has "already been discussing whether layoffs will be necessary in light of diminishing federal assistance." *Id.* ¶ 12.

Additionally, the San Francisco Police Department ("SFPD") plays an active role in emergency and disaster response initiatives. Declaration of Kimmie Wu ("Wu Decl.") [Dkt. No. 19-33] ¶ 2. SFPD is responsible for overseeing over sixty-four square miles of waterways, which contains commercial ships, tour boats, passenger ferries, and cruise ships. *Id.* ¶ 7. To support these coverage efforts, SFPD typically receives PSGP and Boating Safety & Enforcement Equipment Grants. *Id.* ¶ 5. This year, for example, SFPD was awarded $24,000 in PSGP funding to "replace an inflatable vessel that was procured in 1988 and is no longer seaworthy." *Id.* ¶ 6. The PSGP grant contains the DHS Conditions at question in this case. *Id.* ¶ 8. Because San Francisco is operating under "severe financial strain," the SFPD is "operating under tremendous budgetary pressure." *Id.* ¶ 9. SFPD is currently "critically understaffed and incurs considerable overtime expenses to respond to increased public safety requests and demands." *Id.* ¶ 10. As a result, SFPD maintains it will not be able to "fund the replacement of critical, expired, damaged, or defective equipment" without DHS and FEMA funding. *Id.* ¶ 11.

The Port of San Francisco is responsible for "implement[ing] physical security measures to protect measures and facilities" in the San Francisco Bay, including two major bridges, the local subway system, and the City's ferry network. Declaration of Kyle Thomas ("Thomas Decl.") [Dkt. No. 19-35] ¶¶ 3–4. The Port is currently in a "multi-year effort to improve [port] security through infrastructure improvements, target hardening, and training programs." *Id.* ¶ 5. These improvements have been funded primarily by PSGP funding from FEMA. *Id.* This year, the Port has received $73,372.50 in PSGP funding to replace CCTV cameras throughout the area to increase security and law enforcement agencies. *Id.* ¶¶ 6–7. This PSGP award includes the DHS Conditions in question. *Id.* ¶ 7. Without FEMA funding, the Port maintains "there is no guarantee [they] will be able to replace its surveillance system," leaving a "patchwork of vulnerabilities" in the region's security. *Id.* ¶ 8.

The San Francisco Municipal Transportation Agency ("SFMTA") is "responsible for safety and security" for the City's mass transit lines. Declaration of Kimberly M. Burrus ("Burrus Decl.") [Dkt. No. 19-31] ¶ 1. Unlike other transit agencies, the SFMTA does not have its own police force, and relies entirely on the SFPD. *Id.* at 3. To address this lack of transit law enforcement, SFMTA regularly receives DHS funding to cover "hiring for additional police for special events and 'surge overtime.'" *Id.* ¶ 4. This year, SFMTA has received a $3,066,376 in TSGP funding to continue this initiative. *See id.* ¶ 8; Declaration of David Louk ("Louk Decl.") [Dkt. No 19-3] Ex. 5 ("SF TSGP Award"). This grant contains the DHS Conditions. *See* SF TSGP Award. Without this funding, SFMTA maintains that it "cannot allocate a contingency group large enough to manage transit specific needs." Burrus Decl. ¶ 11. This is particularly true considering SFPD is already operating at below-minimum staffing levels, and the SFMTA is facing a 5 to 7% operating budget cut this upcoming year. *Id.* ¶¶ 6, 11.

Finally, San Francisco is part of the Urban Areas Security Initiative ("Bay Area UASI"), a regional agency that "administers federal emergency management grants dedicated to preventing, protecting against, responding to, and recovering from terrorist incidents and catastrophic events for its members—the three major Bay Area cities and its 12 counties." Declaration of Mikyng Kim ("Kim Decl.") [Dkt. No. 19-34] ¶ 3. San Francisco acts as the fiscal agent for Bay Area UASI and receives significant funding and support as a member. *Id.* ¶ 6. Bay Area UASI currently receives three DHS pass-through grants: STC, Regional Catastrophic Preparedness Grant

Program, and UASI. *Id.* ¶ 7. This year, the State of California received $93,473,801 in UASI funds, and Bay Area UASI expects to receive approximately one-third of these funds. *Id.* ¶¶ 12–13. Because Bay Area UASI passes most of this money to its members, San Francisco expects to receive roughly $2.5 million in UASI funding. *Id.* ¶¶ 15–16. The City plans to use this grant to purchase an X-Ray screening system and Portable Camera Kit for law enforcement, fund the salaries of two emergency services planners, and purchase other equipment to assist with portable water distribution, search and rescue operations, and terrorist attack recovery efforts. *Id.* ¶ 16. Without federal funding, San Francisco maintain it will not be able to financially support these initiatives. *Id.* ¶ 17.

R. San José

The City of San José is the third largest city in California and is home to approximately 980,000 individuals. Declaration of Raymond Riordan ("Riordan Decl.") [Dkt. No. 19-36] ¶ 4. San José is situated in a "region of very high seismic activity" and an area with a "history of flooding due to heavy rain and inadequate storm drains and flood protection conveyance systems." *Id.* Additionally, the City faces "significant wildlife concerns across multiple Fire Hazard Severity Zones." *Id.*

San José currently receives $6,050,857 in grants from the DHS and FEMA. *Id.* ¶ 5. These include: $85,000 in AFG funding for "equipment for firefighters"; $39,648 in EMPG funding "for training and to purchase technology and equipment for the [city's] Emergency Operation Center"; $6,544,138 in HMGP funding to "implement a soft-story seismic retrofit program"; $252,132 and $267,796 in SHSP funding for "training programs" and an "inspection robot to access and inspect areas too small or dangerous for humans"; and $4,771,151 in UASI funding to "prepare for various emergencies including to fund three staff positions." *Id.* ¶ 6. San José has also applied, or intends to apply, for an additional $587,098 in AFG funding, $22,600 in EMPG funding, $18,060,082 in HMGP funding, $1,253,153 in SHSP funding, and $1,570,000 in UASI funding. *Id.*

San José maintains that it will be forced to either accept the DHS Conditions or lose at least $20 million in DHS and FEMA funding. *Id.* ¶¶ 7–8. With an ongoing budget shortfall, the

DHS and FEMA grants allow the city to maintain "necessary law enforcement and fire and rescue equipment" and personnel. *Id.* ¶ 9. Were San José to lose this funding, it would "face the difficult decision to cut costs while still maintaining essential services to [its] residents." *Id.* This could lead to "layoffs and the elimination of programs that serve [the City's] most vulnerable residents," even if on a temporary basis. *Id.*; *see also id.* ¶ 10 (outlining the specific consequences of loss of funding for the OEM, San José Police Department, and San José Fire Department).

S. San Mateo County

San Mateo County is located in the San Francisco Bay Area and has a population of over 700,000 residents. Declaration of Michael P. Callagy ("Callagy Decl.") [Dkt. No. 19-37] ¶¶ 3–4. The County is "uniquely vulnerable to a wide spectrum of threats and hazards," including "sea-level rise, coastal flooding, . . . tsunamis[,] a high probability of major earthquakes, [and] wildfires." *Id.* ¶¶ 3–5. It also contains critical infrastructure for the San Francisco Bay Area, including San Francisco International Airport. *Id.* ¶ 6. Because of this "unique risk-profile," San Mateo County is part of the Bay Area UASI region and the Northern California Regional Intelligence Center ("NCRIC"), a joint initiative between twenty-six Northern California counties to assist with the "collection, analysis, and dissemination of terrorism and organized crime threat intelligence." *Id.* ¶¶ 7–9.

San Mateo County currently receives approximately $3 million in DHS and FEMA funding. *Id.* ¶ 13. These include active HSGP, UASI, EMPG, Pre-Disaster Mitigation ("PDM"), and HMGP funding. *Id.* ¶ 14. Such grants provide support to county's "emergency response and preparedness capacity," "ongoing wildfire fuel-reduction efforts," "prevention, response, and recovery [efforts] across jurisdictions," and "large-scale emergenc[y]" response initiatives. *Id.* ¶¶ 14–16. Additionally, San Mateo County manages grants for NCRIC, which receives almost $2.5 million and $7 million in HSGP and UASI funding, respectively. *Id.* ¶ 23. The County also anticipates applying for an additional $2.5 million in HSGP funding and $7.5 million in UASI funding for NCRIC. *Id.*

San Mateo County maintains that it will be forced to either accept the DHS Conditions or lose millions in DHS and FEMA funding. *Id.* ¶ 27. NCRIC has "no alternative source of funding"; without these grants, it would be forced to close, "eliminating regional and national coordination against crime, terrorism and transnational narcotics networks." *Id.* ¶ 28. This would impact critical services, such as "tsunami sirens and countywide alert infrastructure," "putting lives at risk during emergencies." *Id.* Loss of funding would also stall wildfire mitigation efforts and impair emergency preparation for other natural disasters. *Id.* ¶¶ 29–30. These risks would "leave the County and its residents, as well as Northern California more broadly, dangerously exposed, undermine all prior investments, and erode both short-term response capability and long-term community resilience." *Id.* ¶ 31.

T. Santa Clara County

The County of Santa Clara is a charter county in California home to approximately 1.9 million residents. Declaration of Dana C. Reed ("Reed Decl.") [Dkt. No. 19-38] ¶ 4. OEM acts as the "lead emergency management agency for the entire Santa Clara County Operational Area," and is "heavily supported by FEMA funding streams." *Id.* ¶¶ 8–9. OEM receives federal grants from four different grant programs: SHSP, EMPG, UASI, and HMGP. *Id.* ¶¶ 11, 25.

Last year, Santa Clara County received $1,664,434 in SHSP grants to fund five critical staff positions in OEM focused on counterterrorism and emergency planning, as well as purchasing critical equipment. *Id.* ¶¶ 14–15. This year, they seek $1,852,295 to fund the same positions and increase equipment and training programs. *Id.* ¶ 16. Similarly, with respect to EMPG funding, Santa Clara County received $452,624 in 2024 to fund "full-time Emergency Operational Area Council Liaison" and "Voluntary Organizations Active in Disaster Liaison" staff positions, as well as "training, technology, public outreach, and critical emergency supplies." *Id.* ¶¶ 19. The County was allocated $451,385 this year for "substantially the same" uses. *Id.* ¶ 20. Santa Clara County also received $573,585 in 2024 in UASI funding, which was used to purchase an armored vehicle for the Sheriff's Emergency Response team; this year, the County received $573,585 to help purchase a "multi-passenger transit van and a decontamination trailer, evacuation devices, and patient-transport devices for Santa Clara's public health and hospital system." *Id.* ¶¶ 23–24. Finally, Santa Clara County anticipates $750,000 in pass-through HMGP funding this year, which will be used to purchase wildfire detection equipment. *Id.* ¶¶ 25–26.

Santa Clara County maintains that it will be forced to either accept the DHS Conditions or lose at least $3.6 million in DHS and FEMA funding. *Id.* ¶ 27. This will be particularly impactful on the County's OEM, as FEMA funding comprises 43% of their FY 2025 budget. *Id.* Without DHS and FEMA funding, Santa Clara County will be forced to abandon, among other things, "coordinated community-wide planning" for natural disasters and upcoming events in the County, such as Super Bowl LX and the FIFA World Cup. *Id.* ¶¶ 29–33.

U. Santa Monica

The City of Santa Monica is located in Los Angeles County and is home to approximately 93,000 residents. Declaration of Oliver Chi ("Chi Decl.") [Dkt. No. 19-39] ¶ 4. The City is a popular tourist destination, attracting over 6 million tourists each year. *Id.* It is also adjacent to Pacific Palisades, which was devastated by the January 2025 Fires. *Id.* ¶ 5. Santa Monica is also subject to fire risk, with almost 3,100 housing units and 237 businesses being reclassified into fire hazard zones by the California Department of Forestry and Fire Protection. *Id.* ¶ 6. The City is also at risk for earthquakes—FEMA research "estimates $3.4 billion in total economic loss for Santa Monica after a major earthquake on the Santa Monica Fault." *Id.* ¶ 7.

Santa Monica receives approximately $4 million in FEMA grants each year. *Id.* ¶ 8. These grants include $2 million in combined UASI and SHSP funds to "coordinate regional trainings for fire department personnel, . . . training and equipment, and for cybersecurity improvements"; $135,000 in HMGP funds to provide "robust community outreach materials to educate Santa Monica residents about local hazards and potential risks of unmitigated disaster events"; and a $1,930,860 HMGP grant for "seismic retrofit work." *Id.* ¶¶ 8–15. The City anticipates receiving an additional $4.8 million in HMGP funds to finish their seismic retrofitting programs, $1.33 million in Public Assistance Grant Program funds to support recovery efforts from the January 2025 Fires, and $119,056 in AFG funding to support a firefighter wellness and fitness program. *Id.* ¶¶ 16–19. Santa Monica believes these future grants will contain (or, in the case of the AFG funding, already contains), the DHS Conditions. *Id.* ¶ 20.

Santa Monica maintains that it will be forced to either accept the DHS Conditions or lose at least $5.9 million in DHS and FEMA funding. *Id.* ¶ 23. Without this funding, Santa Monica contends it will lose the ability to fund their Regional Training Officer contractor position in the Santa Monica Fire Department, which to train approximately 9,000 firefighters across twenty-nine fire agencies. *Id.* ¶ 25. Additionally, as the greater Los Angeles region prepares for three major upcoming events—the FIFA World Cup in 2026, the Super Bowl in 2027, and the Olympics in 2028—Santa Monica fears that losing these grants would result in critical incident preparedness trainings would be discontinued. *Id.* ¶ 28. Finally, hundreds of residents may lose the ability to retrofit their buildings without this funding. *Id.* ¶ 29. Santa Monica cannot fund these programs without FEMA grants, as the City has declared a financial emergency. *Id.* ¶ 30.

V. Santa Rosa

The City of Santa Rosa is a municipal corporation and charter city located in Sonoma County, California. Declaration of Jason Nutt ("Nutt Decl.") [Dkt. No. 19-41] ¶¶ 2, 6. Santa Rosa is particularly vulnerable to wildfires: between 2017 and 2020, the City was significantly impacted by five major wildfires, destroying thousands of homes and burning hundreds of thousands of acres. *Id.* ¶ 7.

Santa Rosa receives roughly $47 million in grants from DHS and FEMA. *Id.* ¶ 8. Currently, the Santa Rosa Fire Department receives $2.36 million in SAFER grants to pay for the salaries of twelve firefighter paramedic positions, which the City cannot pay for itself. *Id.* ¶ 9. Additionally, Santa Rosa has been approved for, but has not yet received, $14.2 million in HMGP funding to update a wastewater facility to protect 230,000 individuals from "flood events." *Id.* ¶ 10. The Santa Rosa Fire Department ("SRFD") expects disbursement of approximately $3.6 million in HMGP funding to be used for "vegetation removal and fuel reduction projects along City evacuation routes, vegetation management education, and vegetation management compliance." *Id.* ¶ 11. The SRFD is also in the process of applying for a $200,000 AFG grant, which would allow for the purchase of "critical specialized firefighting and emergency medical equipment the City would otherwise lack the resources to acquire." *Id.* ¶ 12.

Santa Rosa anticipated receiving these DHS and FEMA grants when approving its FY 2025 budget; losing this funding would put the City "in limbo." *Id.* ¶ 13. It contends that "[l]oss of any significant portion of these grant funds will [also] result in increased risk of infrastructure failure due to deferred maintenance and lack of preparedness for future disasters, accelerating the City's need to use critical emergency reserves in fiscal year 2025-26, reserves that have been set aside to support community health, safety, and governmental operations during potential future disasters." *Id.* "Simply put, Santa Rosa would not be able to cover such a shortfall." *Id.*

W. Snohomish County

Snohomish County is located in the greater Seattle area Washington State. Declaration of Lucia Schmit ("Schmit Decl.") [Dkt. No. 19-42] ¶ 3. Snohomish County has a unique topography, including "numerous valleys, lowlands, forestlands and waterfront." *Id.* ¶ 4. This, in combination with the County's dense population, makes the area "prone to hazardous weather events and flooding[,] an increasing risk of wildfire[,] [and] earth movement events including earthquakes, landslides and volcanoes." *Id.* The Snohomish County Department of Emergency Management ("DEM") provides emergency management services for the County. *Id.* ¶ 3. The DEM is also a member of the Seattle Metropolitan UASI. *Id.*

Snohomish County currently receives $670,474 in EMPG funds, $885,203 in SHSP funds, and $1,676,743 in UASI funds. *Id.* ¶ 5. It also anticipates receiving $425,000 in Flood Mitigation Assistance funds. *Id.* The DEM also has pending awards in the following amounts: $303,237 in EMPG funds; $368,325 in SHSP funds; and $1,009,251 in UASI funds. *Id.* The DHS also plans to apply for three new grant awards: $540,000 in SHSP funds, $370,000 in EMPG funds, and $750,000 in UASI funds. *Id.* These grants support roughly "one third of the core emergency management staff at DEMA." *Id.*

Snohomish County maintains that it will be forced to either accept the DHS Conditions or lose at least $2.1 million in DHS and FEMA funding. *Id.* ¶ 14. This loss of funding would create "long term challenges, particularly in efforts to prepare for infrequent but major disasters." *Id.* Instead, the County would be forced to divert resources from emergency management programs, which would result in "fewer investments in preparedness and mitigation, which will only increase the need for response in the future, in a continuing vicious cycle." *Id.* Snohomish County points to potential cuts to its training programs (despite it providing approximately 40% of all emergency management training in the state of Washington) as well as planning and outreaching initiatives.

Id. at ¶ 15.

X. Sonoma County

The County of Sonoma is located in Northern California and is home to approximately 500,000 residents. Declaration of Johannes Hoevertsz ("Hoevertsz Decl.") [Dkt. No. 19-43] ¶ 3. This region is "impacted by a variety of hazards, natural and man-made, including wildfires, earthquakes, and floods." *Id.* The most frequent hazard is flooding, with "major flooding events occurring every one to two years." *Id.* ¶ 4. The County has an "extensive history of flooding and weather storm events": since 1980, $130 million in flood claims have been paid in the County, the highest flood damage cost of any county on the West Coast. *Id.* FEMA's National Risk Index places the County at the 99.17% percentile for flood hazard risk. *Id.* The "expected annual loss from flooding alone is $23 million." *Id.*

The County of Sonoma's Public Infrastructure Department ("SPI") oversees the County's FEMA grant awards. *Id.* ¶ 5. SPI currently oversees $968,550 in HMGP funding to "design . . . long-stabilization and engineering solutions to [a] critical County roadway" subject to erosion, flooding, and bank stabilization issues. *Id.* ¶¶ 6, 9. Additionally, SPI expects to receive $155,666.25 in HMGP funding to "install solar-powered flood monitoring cameras and automated, high-water warning systems at high-risk intersections." *Id.* ¶¶ 10–11. It anticipates these new grants to contain the DHS Conditions. *Id.* ¶ 13.

Additionally, the Sonoma County DEM oversees all pass-through grant funding awarded to the State of California by DHS and FEMA. Declaration of Samuel Wallis ("Wallis Decl.") [Dkt. No. 19-44] ¶ 10. Currently, DEM oversees $2,288,116 in pass-through funding from HSGP, EMPG, and HMGP grants. *Id.* ¶¶ 11, 14. DEM also anticipates applying for approximately $500,000 in HSGP and UASI funding as a subgrantee. *Id.* ¶¶ 11, 16.

Sonoma County maintains that it will be forced to either accept the DHS Conditions or lose $1,124,216 in direct grant funding, as well as $500,000 in pass-through funding. *Id.* ¶ 20; Hoevertsz Decl. ¶ 14. Such loss of funding would result in critical infrastructure remaining "vulnerable to washouts and closures," as well as "increased life-safety threats due to stuck and submerged vehicles and high-risk water rescues of stranded drivers." Hoevertsz Decl. ¶¶ 15–16.

The County does not have "adequate local or other funding alternative[s]" for the grants. *Id.* ¶ 16.

Y. Sonoma Water

The Sonoma County Water Agency is a special district created by the California Legislature in 1949 to "provide flood protection and water supply services." Declaration of James L. Spaulding ("Spaulding Water Decl.") [Dkt. No. 19-45] ¶¶ 3–4. Sonoma Water helps manage a "water transmission system that supplies roughly 90% of pressurized water to nine cities and water agencies . . . serving over 600,000 residents throughout Sonoma and northern Marin Counties." *Id.* ¶ 4. In 1995, the California Legislature "added the treatment of disposal of wastewater to Sonoma Water's responsibilities." *Id.* This service provides wastewater collection and recycled water distribution/disposal services for roughly 22,000 residences and businesses. *Id.* Sonoma Water is additionally tasked with providing flood protection for the County. *Id.*

Sonoma Water plays an integral role in Sonoma County's flooding and wildfire prevention efforts. *Id.* ¶ 5. Since 2008, Sonoma Water has received $16 million in pass-through funding from DHS and FEMA for "targeted mitigation projects that have improved the resiliency of Sonoma Water's facilities and infrastructure to withstand the effects of natural hazard events." *Id.* ¶ 6. Active funding includes a $2,956,867 HMGP grant to "develop hazard mitigation plans and implement long-term hazard reduction projects"; $86,697 in HSGP funding to "purchase and install[] a video surveillance/alarm monitoring system to enhance the protection of Sonoma County's primary water supply"; and $250,000 in Local Cybersecurity Grant Program funding to upgrade cybersecurity intrusion systems. *Id.* ¶ 8. Sonoma Water has also applied for $487,500 in additional HMGP funding, as well as $6,143,525 in Presidential Major Disaster Declaration ("PMDD") funding to "support the seismic retrofitting of . . . water transmission pipelines" to withstand a 7.0 magnitude earthquake. *Id.* ¶ 9.

Sonoma Water maintains that it will be forced to either accept the DHS Conditions or lose $9,437,892 in FEMA funding. *Id.* ¶ 11. Because the pending HMGP funding is meant to support ongoing projects, Sonoma Water will be forced to "complete the project without HMGP funding," resulting in significant financial hardship. *Id.* ¶ 12. Additionally, loss of PMDD funding would "effectively shelve the project and leave contractors and their customers vulnerable to aqueduct failure in a significant seismic event." *Id.*

Z. Sonoma Valley County Sanitation District

Sonoma Valley County Sanitation District ("SVCSD") is a special district in Sonoma County created in 1953. Declaration of James Spaulding ("Spaulding SVCSD Decl.") [Dkt. No. 19-46] ¶ 4. SVCSD is a separate legal entity from Sonoma Water, with a separate Board tasked with overseeing the assets of the district. *Id.* Currently, SVCSD serves 17,927 single family homes with an estimated population of 42,000 individuals. *Id.* It is the "sole entity providing public wastewater collection and treatment for the City of Sonoma and numerous unincorporated communities within Sonoma Valley." *Id.*

SVCSD currently receives $5,299,998 in pass-through HMGP funding to assist with seismic retrofitting of secondary clarifies at its wastewater treatment plant. *Id.* ¶ 5. It also has a pending application for HMGP funding in the amount of $1,596,750 to "support a bank stabilization project along Sonoma Creek and Kohler Creek to reduce risk to public health and the environment posed by erosion." *Id.* ¶¶ 5–6. Further, SVCSD intends to apply for $2 to $6 million in additional funding should it become available through a new PMDD. *Id.* ¶ 7.

Sonoma Water maintains that it will be forced to either accept the DHS Conditions or lose access to funding that provides essential services to the 42,000 residents it serves. *Id.* ¶ 8. Loss of this funding would "delay and impact the construction needed to protect its vital infrastructure to avoid damage, failures, disruption in service, loss of property, and repair costs while avoiding risks to public health and the environment." *Id.* ¶ 9.

AA. Sonoma County Community Development Commission

The Sonoma County Community Development Commission ("SCCDC") is a public body exercising governmental functions pursuant to California Health and Safety Code Section 34110 *et seq.* Declaration of Michelle Whitman ("Whitman Decl.") [Dkt. No. 19-47] ¶ 4. It is charged with overseeing "rental assistance, affordable housing and community infrastructure projects," as well as supporting non-profit organizations supporting low-income communities in Sonoma County. *Id.* It also implements the County of Sonoma Flood Elevation Program, which was created in response to widespread flooding in the 1980s and 1990s. *Id.* ¶ 6.

SCCDC is the body responsible for applying for pass-through funding from the California Office of Emergency Services. *Id.* ¶ 7. Once funding is received, the County of Sonoma becomes the subrecipient of the grant, while the SCCDC administers the grant. *Id.* Sonoma County currently has two active awards: $916,171.13 in FMA funding, and $1,424,319.75 in HMGP funding. *Id.* It also has a pending application for $2,790,340.00 in FMA funding. *Id.* These grants help fund programs that "elevate flood prone residential homes located in the [County's] Special Flood Hazard Area." *Id.* ¶ 8.

SCCDC maintains that Sonoma County will be forced to either accept the DHS Conditions or lose access to $5,130,830.88 in DHS and FEMA funding. *Id.* ¶ 9. Loss of funding would result in "multiple homes and occupants [remaining] unprotected from the imminent threat of damage, destruction, injury, or death" caused by local flooding hazards. *Id.* This, in turn, would place a greater strain on local resources, "increasing the costs of those services and . . . adding to the dangerous workload of 'boots on the ground' emergency service workers." *Id.* SCCDC, Sonoma County, or homeowners would also be forced to brunt any lost costs, which would "cause significant financial hardship." *Id.* ¶ 10.

BB. Tucson

The City of Tucson is located in Pima County, Arizona, and is home to over 500,000 residents. Declaration of Sharon McDonough ("McDonough Decl.") [Dkt. No. 19-48] ¶ 3. Given the "extremely hot, dry climate" of the region, Tucson faces a constant concern of wildfires. *Id.* ¶ 4. The arid climate also makes it prone to flash floods when it rains in the region. *Id.*

To respond to these threats, the Tucson Fire Department ("TFD") relies on substantial grants from FEMA, which account for up to 4% of the Department's annual budget. *Id.* ¶¶ 4–5. TFD currently receives $1,844,916 in direct FEMA grants, as well as $312,000 in HSGP pass-through funding. *Id.* ¶ 5. It has also applied for over $5.7 million in SAFER and AFG funding, as well as approximately $1 million in additional SHSP pass-through grants. *Id.* These new grants will cover purchasing "tethered drone systems to enhance the department's ability to respond to all hazards events"; "equipment and training" for the Arizona Regional/Border Hazmat Response Team; upgrading necessary search and rescue equipment; conducting training courses and supplies

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for technical rescue technicians; and hiring additional firefighters. *Id.* ¶¶ 12, 14. Each of the FY 2024 and FY 2025 awards received by Tucson contain the DHS Conditions. *Id.* ¶ 15.

Tucson maintains that it will be forced to either accept the DHS Conditions or lose access to millions in DHS and FEMA funding. *Id.* ¶ 17. The City faces "mounting economic pressures," which has "constrained [its] ability to invest in critical frontline services, especially fire and emergency response," without this funding. *Id.* ¶ 18. In its view, federal funding is "not merely beneficial but essential." *Id.* ¶ 19. FEMA grants are a "life-saving resource that equip[] TFD to fulfill its mission without compromising financial integrity or operational effectiveness." *Id.* Without this funding, Tucson will be forced to reduce its efforts to "coordinate and enhance emergency response efforts on a regional basis." *Id.* ¶ 20.

4. PROCEDURAL HISTORY

On September 30, 2025, plaintiffs filed a complaint in the Northern District of California, seeking declaratory and injunctive relief that the DHS Conditions are unconstitutional. *See* Compl. They then filed a motion for preliminary injunction on October 1, 2025, seeking to "prohibit[] Defendants from imposing or enforcing the Unlawful DHS Conditions on Plaintiffs, withholding funding on the basis of those unlawful conditions, or imposing any materially similar conditions on Plaintiffs." Mot. at 25.[7] Because some plaintiffs faced an October 24, 2025, deadline to accept funding with the DHS Conditions, plaintiffs also moved to establish an expedited briefing schedule. *See* Plaintiffs' Motion to Shorten Time [Dkt. No. 21]. While I granted plaintiffs' motion to expedite on October 7, 2025, *see* Order Granting Motion [Dkt. No.

[7] That same day, plaintiffs filed a request for judicial notice of various FEMA manuals, grant NOFOs, and the Bondi Discrimination Guidance Memo. *See* Plaintiffs' Request for Judicial Notice ("RJN") [Dkt. No. 20]. Plaintiffs' request for judicial notice is GRANTED. Under Federal Rule of Evidence 201, courts may take judicial notice of any fact "not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b), (c)(2). "Courts may take judicial notice of some public records, including the 'records and reports of administrative bodies.'" *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (quoting *Interstate Nat. Gas. Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953)). Each of the exhibits in the RJN are public records or reports issued by FEMA, DHS, or the Department of Justice. These materials fit squarely within the type of facts I may take judicial notice of.

54], due to the federal government shutdown, the parties stipulated to push back the briefing and hearing schedule in exchange for pausing any pending deadlines. *See* Stipulation with Proposed Order [Dkt. No. 61]. I granted their proposed order on October 10, 2025, with the understanding that the earliest deadline plaintiffs would face was Monday, November 24, 2025, at 11:59 p.m. Pacific Time. *See* Order Granting Stipulated Request [Dkt. No. 63].

On October 24, 2025, defendants filed their response. *See* Defendants' Opposition to Plaintiffs' Motion for a Preliminary Injunction ("Oppo.") [Dkt. No. 66]. Plaintiffs responded on November 4, 2025. *See* Plaintiffs' Reply in Support of Motion for Preliminary Injunction ("Repl.") [Dkt. No. 69].[8] I heard oral argument on November 19, 2025.

LEGAL STANDARD

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). This has been interpreted as a four-part conjunctive test, not a four-factor balancing test. However, the Ninth Circuit has adopted a sliding scale approach, where a plaintiff may obtain an injunction so long as he has demonstrated "serious questions going to the merits," that the balance of hardships "tips sharply" in his favor, that he is likely to suffer irreparable harm, and that an injunction is in the public interest. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011).

DISCUSSION

I. JUSTICIABILITY

Defendants first challenge the justiciability of plaintiffs' claims. *See* Oppo. at 5–10. They claim plaintiffs lack an injury-in-fact to establish standing in federal court, as many have yet to receive the grants central to this dispute. *See id.* at 8–10. They also argue the Tucker Act bars

[8] Plaintiffs also filed an additional request for judicial notice with their reply. *See* Plaintiffs' Supplemental Request for Judicial Notice ("Supp. RJN") [Dkt. No. 70]. Specifically, plaintiffs seek judicial notice of an additional DHS/FEMA NOFO and a memorandum from FEMA's Acting Deputy Administrator for Resilience discussing the 2026 FIFA World Cup. *Id.* at 2. For the same reasons as the RJN, plaintiffs' request is GRANTED.

federal district courts from hearing this dispute. *See id.* at 5–8. Neither contention has merit.

A. Standing

A plaintiff has standing under Article III of the United States Constitution if (1) they have suffered an injury-in-fact or face an imminent injury; (2) the injury is fairly traceable to the defendant's conduct; and (3) a favorable decision would likely redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

1. Injury-in-Fact

An injury-in-fact must be concrete, particularized, and imminent. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). An injury is concrete when it has a "close relationship" to a harm "traditionally" recognized as providing a basis for suit. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021). An injury is particularized if it affects the plaintiff in a "personal and individual way." *Spokeo*, 578 U.S. at 339 (internal citation omitted). And an injury is actual or imminent if it has already occurred or there is a substantial risk that it will occur. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105–06 (1983). Plaintiffs typically must make a separate showing for each form of relief requested. *Id.* at 111.

Defendants argue that plaintiffs have not properly shown they have suffered (or will suffer) injury for five grant programs—HMGP, SAFER, FP&S, EMPG, and HSGP. Oppo. at 8–9.[9] With respect to the HMGP, SAFER, and FP&S grants, defendants maintain that none of the plaintiffs "currently receive or have yet been offered" these funds. *See id.* at 9. Because plaintiffs must make a separate showing for "each claim that they press against each defendant," defendants conclude plaintiffs lack standing on these three claims. *See id.* at 8 (citing *Murthy v. Missouri*, 603 U.S. 43, 61 (2024)). Additionally, defendants contend that plaintiffs are mere "subrecipients of the [EMPG and HSGP funds]" and therefore have "no control over whether the funds are accepted." *Id.* at 9. Because they cannot "make any decision regarding whether to accept those funds and any decisions about whether those funds are ultimately passed down," defendants similarly conclude that standing cannot be established for these grants. *Id.*

[9] As plaintiffs recognize in their reply, defendants do not challenge plaintiffs' standing for their AFG, TSGP, US&R, PSGP, and STC grant claims. *See* Repl. at 1.

Defendants misunderstand the theory of this case. Plaintiffs are "challenging the *policy* of applying the Standard DHS Terms to all of Defendants' grants," which is enough to establish standing. *See* Repl. at 2 (emphasis in original). *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012), is on point. There, the Ninth Circuit explained that there are "two ways in which a plaintiff can demonstrate that [an] injury is likely to recur." 695 F.3d at 997–98 (citing *Mayfield v. United States*, 599 F.3d 964, 970 (9th Cir. 2010), *cert. denied*, 562 U.S. 1002 (2010)). "First, a plaintiff may show that the defendant had, at the time of the injury, a written policy, and that the injury 'stems from' that policy." *Id.* at 998 (quoting *Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005)). "Second, the plaintiff may demonstrate that the harm is part of a 'pattern of officially sanctioned . . . behavior, violative of the plaintiffs' [federal] rights.'" *Id.* As plaintiffs correctly argue to satisfy the first prong, "Defendants adopted the written Standard DHS Terms as an official policy and are categorically imposing the Unlawful DHS Conditions on all of Defendants' grants." Repl. at 2. Because plaintiffs are "harmed by this policy because they have received awards that contain the conditions," that "is enough to show standing." *Id.*

Melendres controls this case. Defendants do not contest that the DHS Conditions are being "categorically impos[ed]" on plaintiffs' current and future DHS and FEMA grants. Repl. at 2. And, as explained in detail below, plaintiffs show that their alleged injury—choosing to accept a potentially unconstitutional condition or forfeit millions in critical funding—is an "injury [that] 'stems from' [DHS and FEMA's] policy." *Melendres*, 695 F.3d at 998. That is enough to establish an injury-in-fact for the grant programs under *Melendres*. *See id.*

Moreover, plaintiffs have also established an injury-in-fact for each of the questioned grant programs. A "material risk of future harm can satisfy the [injury-in-fact] requirement," should the "risk of harm [be] sufficiently imminent and substantial." *TransUnion*, 594 U.S. at 415, 435. That standard is met here. Plaintiffs have sufficiently identified parties who have already received HMGP and SAFER grants with the DHS Conditions. For example, the Los Angeles Fire Department received a $4,204,414.04 SAFER grant in 2024, which "incorporate[ed] . . . all conditions set forth in the . . . 2025 DHS Standard Terms and Conditions." *See* Chavez Decl. ¶¶

10–11. Similarly, the City of Santa Rosa has received approval for two HMGP grants totaling $17.8 million, though the grant agreement has not yet been provided. *See* Nutt Decl. ¶¶ 10–11.[10]

Further, plaintiffs' HSGP and EMPG claims sufficiently identify an injury-in-fact, even as subrecipients to the grants. Although plaintiffs do not receive these grants directly from DHS or FEMA, the allegedly unlawful DHS Conditions "flow through the states to subrecipients." Repl. at 3. As shown in their motion and corresponding declarations, plaintiffs "reasonably expect to receive millions pursuant to these programs from their states based on predetermined allocations in the notices of funding opportunities ("NOFO"), statutory entitlement, and long-standing practice." *Id.* at 2; *see, e.g.*, Kim Decl. ¶¶ 8–14; Bowman Decl. ¶¶ 5–10; Reed Decl. ¶¶ 16–24. Therefore, plaintiffs reasonably anticipate being forced to either accept the DHS Conditions, despite their potential unconstitutionality, or forfeit millions in disaster and emergency preparedness funding. This is a classic dilemma that establishes an injury-in-fact. *See Stavrianoudakis v. U.S. Fish & Wildlife Serv.*, 108 F.4th 1128, 1137 ("A plaintiff suffers a 'constitutionally cognizable injury' whenever the government succeeds in pressuring the plaintiff into forfeiting a constitutional right in exchange for a benefit or the government withholds a benefit based on the plaintiff's refusal to surrender a constitutional right.") (citation omitted).

Plaintiffs have sufficiently identified an injury-in-fact to establish standing.

2. Traceability and Redressability

In addition to an injury-in-fact, the two remaining standing elements are also satisfied, which defendants do not dispute. The harm asserted by plaintiffs is traceable to the defendants' conduct because plaintiffs are forced to either accept DHS and FEMA's allegedly discriminatory conditions or forego millions in crucial emergency and disaster-related funding. And the remedy they seek—a permanent injunction to prevent defendants from enforcing these conditions—would redress their harms should I grant an injunction in their favor.

B. The Tucker Act

Defendants also contest the statutory jurisdiction of plaintiffs' claims by arguing that the

[10] While defendants assert that no plaintiff shows that they have received a FP&S grant containing the DHS Conditions, that is immaterial because *Melendres* controls this case.

Tucker Act precludes district courts from hearing this case. The crux of their argument is this: plaintiffs bring contract claims disguised as constitutional and statutory claims, and the only forum that can hear federal contract disputes is the Court of Federal Claims (the "CFC"). *See* Oppo. at 5–8. Conversely, plaintiffs argue that (1) their claims *are* constitutional and statutory, and (2) their complaint seeks equitable relief, which cannot be provided by the CFC. Repl. at 3–4. Plaintiffs' assertions are accurate, and this court has jurisdiction.

Under 28 U.S.C. § 1491, the Tucker Act provides:

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1). Further, 28 U.S.C. § 1346 provides:

> The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of . . . [a]ny other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, **except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort** which are subject to sections 7104(b)(1) and 7107(a)(1) of title 41.

28 U.S.C. § 1346(a) (emphasis added).

Defendants presume that the Tucker Act "extends to claims founded on grants . . . implemented through 'contracts to set the terms of and receive commitments from recipients.'" Oppo. at 6 (quoting *Boaz Hous. Auth. v. United States*, 994 F.3d 1359, 1368 (Fed. Cir. 2021)). Although they acknowledge that plaintiffs seek an injunction, a form of equitable relief, defendants contend that the specific relief sought—"uninterrupted grant funding pursuant to their federal grant agreements"—is actually contractual in nature. *Id.* at 7.

Defendants cite two recent Supreme Court stay rulings dealing with the jurisdictional constraints of the Tucker Act to support their argument. *See id.* at 7–8. First, in *Department of Education v. California*, the Court issued an emergency stay on a temporary restraining order that required the federal government to "pay out past-due [education] grant obligations and to continue paying obligations as they accrue." 604 U.S. 650, 650 (2025). In a four-paragraph order, the Court recognized that the APA's limited waiver of sovereign immunity does not provide jurisdiction to district courts to "enforce a contractual obligation to pay money." *Id.* at 651 (quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212). Rather, the Tucker Act confers the CFC jurisdiction over any suit based on an "express or implied contract with the United States." *Id.* (quoting 28 U.S.C. § 1491(a)(1)). That said, the Court noted that jurisdiction in a district court is "not barred by the possibility that an order setting aside an agency's action may result in the disbursement of funds." *Id.* (quoting *Bowen v. Massachusetts*, 487 U.S. 879, 910 (1988) (internal quotations omitted)).

Defendants also rely on *National Institutes of Health v. American Public Health Association* ("*NIH*"). 145 S. Ct. 2658 (2025). There, plaintiffs brought APA, constitutional, and ultra vires challenges to the federal government's termination of various grants. *Id.* at 2569. The district court granted a partial injunction on the plaintiffs' APA claims, prohibiting the government from implementing the challenged policies and grants. *Am. Pub. Health Ass'n v. Nat'l Insts. of Health*, 791 F. Supp. 3d 119 (D. Mass. 2025). On appeal, the First Circuit affirmed the order vacating the challenged policies. *Am. Pub. Health Ass'n v. Nat'l Insts. of Health*, 145 F.4th 39, 50 (1st Cir. 2025). The Supreme Court disagreed with the lower courts with respect to vacating the grant termination programs and stayed the district court's order. 145 S. Ct. at 2660. The plurality reaffirmed that the APA does not confer jurisdiction to district courts "to order relief designed to enforce any 'obligation to pay money' pursuant to . . . grants." *Id.* Justice Barrett's concurrence also noted that the district court "likely lacked jurisdiction to hear challenges to the grant terminations, which belong in the Court of Federal Claims." *Id.* at 2661 (Barrett, J., concurring).

Plaintiffs' claims are factually distinct from both *California* and *NIH*. Those cases involved the *termination* of grant funding; here, however, plaintiffs' claims do not revolve on any terminations of DHS and FEMA funding. As plaintiffs aptly note in their reply, they "do not challenge any grant terminations, do not advance any claim for breach of a preexisting grant agreement, and do not seek to enforce any obligation to pay funds pursuant to federal grant agreements." Repl. at 3. Rather, plaintiffs' claims "challenge Defendants' use of an unlawful agency policy to impose unlawful grant conditions, and [they] seek equitable relief to prevent Defendants from imposing unlawful conditions and to set aside those provisions of the Standard DHS Terms." *Id.* These claims are rooted not in contract law, but rather in the "Constitution, laws, or treaties of the United States." *Id.*; 28 U.S.C. § 1331. Claims "rooted in statutory and constitutional authorities and that are *independent* of . . . grant agreements" preclude the Tucker Act from applying. *See Washington. v. U.S. Dep't of Health & Human Servs.*, No. 6:25-cv-01748-AA, 2025 WL 3002366, *6 (D. Or. Oct. 27, 2025) (emphasis in original).

Defendants' arguments are also unconvincing in light of Ninth Circuit precedent. Defendants repeatedly point to plaintiffs' complaint, which requests that the court prevent defendants from "reducing the amount of a grant award," as evidence that their argument "hinge[s] on contractual" agreements. Oppo. at 7 (citing Compl. ¶ 76). However, as noted in *California*, "a district court's jurisdiction 'is not barred by the possibility' that an order . . . may result in the disbursement of funds." 604 U.S. at 651 (citation omitted). Rather, jurisdiction is conferred to the CFC by the Tucker Act if an action is "'at its essence' a contract action." *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982). To determine if plaintiffs are really asserting a contractual claim, the Ninth Circuit requires district courts to consider (1) "the source of the rights upon which the plaintiff bases its claims," and (2) "the type of relief sought (or appropriate)." *United Aeronautical Corp. v U.S. Air Force*, 80 F.4th 1017, 1026 (9th Cir. 2023) (quoting *Megapulse*, 672 F.2d at 968)).

As discussed in detail in Section II.A.1, *supra*, plaintiffs' claims are constitutional in nature and cannot be adequately remedied in the CFC, which focuses exclusively on monetary damages for contract actions. Additionally, plaintiffs seek an injunction preventing the application of the DHS Conditions to any federal DHS or FEMA funding, a remedy that cannot be conferred by the CFC. District courts "have found with near or total uniformity that [they] have jurisdiction over claims such as these." *Housing Auth. of City & Cnty. of S.F. et al. v. Turner et al.*, No. 25-cv-08859-JST, 2025 WL 3187761, *9 (N.D. Cal. Nov. 14, 2025) (Tigar, J.) (citing *S.F. Unified*

Sch. Dist. v. AmeriCorps, 784 F. Supp. 3d 1280, 1291–97 (N.D. Cal. 2025)); *see Martin Luther King, Jr. Cnty. v. Turner*, 785 F. Supp. 3d 863, 877–82 (W.D. Wash. 2025); *City of Fresno et al. v. Turner et al.*, No. 3:25-cv-07070-RS, 2025 WL 2721390, *5–*6 (N.D. Cal. Sept. 23, 2025) (Seeborg, C.J.); *City & Cnty. of S.F. v. Trump*, 783 F. Supp. 3d 1148, 1201 n.12 (N.D. Cal. 2025) (Orrick, J.); *Illinois v. Fed. Emergency Mgmt. Agency*, C.A. No. 25-206 WES, 2025 WL 2716277, *9 (D.R.I. Sept. 24, 2025); *President & Fellows of Harvard College v. U.S. Dep't of Health & Human Servs.*, Nos. 25-cv-11048-ADB, 25-cv-10910-ADB, 2025 WL 2528380, *10–*14 (D. Mass. Sept. 3, 2025); *Thakur v. Trump*, 148 F.4th 1096, 1103–04 (9th Cir. 2025). I do not accept defendants' rehashed argument in light of this wall of authority. The Tucker Act does not bar this case from moving forward in district court.

II. LIKELIHOOD OF SUCCESS ON THE MERITS

Having found there to be constitutional and statutory jurisdiction over plaintiffs' claims, I now turn to the merits of their motion. Plaintiffs claim that the DHS Conditions violate (1) the separation of powers, (2) spending power constraints, and (3) the APA. I agree.

A. Separation of Powers

1. Plaintiffs' Claims Are Constitutional

"In many cases, the plaintiff's right to seek judicial intervention arises from a statute." *League of United Latin Am. Citizens v. Exec. Office of the Pres. et al.*, Civ. Action Nos. 25-0946 (CKK), 25-0952 (CKK), 25-0955 (CKK), 2025 WL 3042704, at *23 (D.D.C. Oct. 31, 2025). "Often, in cases challenging action by the Executive Branch, that statute is the Administrative Procedure Act." *Id.* But "because 'the President is not an agency within the meaning of' the APA, the issuance of an executive order is not a final agency action that is reviewable within the APA framework." *Id.* (citing *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992)).

Since the APA affords no statutory right to direct judicial relief, plaintiffs must point to either statutory authority or "resort to equity" to find relief in this case. *Id.* (quoting *Nat'l Treasury Emps. Union v. Vought (NTEU)*, 149 F.4th 762, 790 (D.C. Cir. 2025)). "The availability of such implied equitable relief substantially depends on whether the plaintiff claims a statutory or constitutional violation." *Id.* "If a plaintiff is alleging a violation of a federal statute, the availability of equitable relief to enforce compliance with the statute—often called *ultra vires* review—is 'extremely limited.'" *Id.* (quoting *NTEU*, 149 F.4th at 791)). However, "broader latitude [is afforded] to a plaintiff seeking equitable relief from a *constitutional* violation, rather than a statutory one." *Id.* at *24 (emphasis in original).

The parties dispute whether plaintiffs' claims are constitutional or statutory in nature, and, therefore, the amount of equitable relief to which they may be entitled. Plaintiffs maintain their arguments about the DHS Conditions are constitutional in nature. They raise a separation of powers argument, noting that "Congress exclusively holds the power of the purse . . . [and] authority must be given to the executive by the legislature to impose conditions on the use [of] funds"—authority seemingly not provided by Congress in this case. Mot. at 8; *see City of Los Angeles v. Barr*, 941 F.3d 931, 945 (9th Cir. 2019); *City of Arlington v. F.C.C.*, 569 U.S. 290, 297 (2013). In their view, "Congress has not authorized Defendants to impose grant conditions even *remotely* similar to the Unlawful DHS Conditions, which effectively prohibit any activity that the Administration would consider to be 'DEIA,' purport to rewrite anti-discrimination law as it has long been understood, and force compliance with all executive orders." Mot. at 9. Additionally, the "sprawling and hopelessly ambiguous Unlawful DHS Conditions are contrary to longstanding limits on the spending power in our constitutional structure." *Id.* at 8.

Defendants note that plaintiffs invoke "several *statutory* doctrines for [their separation of powers] proposition, all without elaborating which one applies." Oppo. at 12–13 (emphasis in original). Because plaintiffs cite to "non-constitutional cases relating to whether agencies had statutory . . . authority to perform certain actions," the "major questions doctrine," and statutory authority, defendants conclude that plaintiffs' claims are statutory and should be afforded less equitable relief. *Id.* at 13.

Defendants rely on *Dalton v. Specter*, 511 U.S. 462 (1994), to conclude that plaintiffs "foreclose[d] their ability to raise statutory arguments with constitutional dressing." *Id.* In *Dalton*, the plaintiffs "sought to enjoin the Secretary of Defense . . . from carrying out a decision by the President to close the Philadelphia Naval Shipyard," pursuant to the Defense Base Closure and Realignment Act ("DBCRA") of 1990. 511 U.S. at 474. The plaintiffs sought relief under the

APA, alleging that the Secretary "violated substantive and procedural requirements of the 1990 Act in recommending closure of the . . . [s]hipyard." *Id.* at 466. The Third Circuit recognized under *Franklin v. Massachusetts*, 505 U.S. 788 (1992), that the President's actions were not reviewable under the ADA, since the President is not an agency. *Id.* at 468. However, the court concluded that the claims may still be judicially reviewed, as the "President's actions may still be reviewed for constitutionality." *Id.* at 469 (quoting *Franklin*, 505 U.S. at 801).

The Supreme Court reversed, finding that the claims were statutory, not constitutional, in nature. *Id.* at 477–78. The Court noted that not "every action by the President, or by another executive official, in excess of his statutory authority is *ipso facto* in violation of the Constitution." *Id.* at 472. Rather, "claims simply alleging that the President has exceeded his statutory authority are not 'constitutional' claims, subject to judicial review." *Id.* at 473. Because the procedural requirements at issue were outlined to the DBCRA, which granted "to the discretion of the President" the ability to close certain military bases, the Court concluded that judicial review was "not available." *Id.* at 469–72, 474.

Unlike in *Dalton*, plaintiffs' claims are not rooted solely in a statutory analysis. As plaintiffs contend, "Nothing in the Constitution or congressional authorizations bearing on the DHS programs at issue gives Defendants the power to impose conditions on Plaintiffs' awards remotely approaching those at issue here." Mot. at 8. The crux of plaintiffs' motion is that "Congress has not authorized Defendants to impose grant conditions even *remotely* similar to the Unlawful DHS Conditions"—an argument rooted in constitutional separation of power concerns. *See id.*

That plaintiffs also invoke "statutory doctrines for this proposition" is immaterial. *See* Oppo. at 12. In *Murphy Co. v. Biden*, the Ninth Circuit addressed whether the President had the authority under the Antiquities Act to expand a national monument in southwestern Oregon. 65 F.4th 1122, 1124 (9th Cir. 2023). The opinion recognizes that the Ninth Circuit "tak[es] an expansive view of the constitutional category of claims highlighted in *Dalton*." *Id.* at 1130. "[A] challenge to presidential action will be considered constitutional, and therefore justiciable under *Franklin*, so long as a plaintiff claims that the President has violated . . . constitutional separation of powers principles because the President's action lacked both statutory authority and background constitutional authority." *Id.* (citing *Franklin*, 929 F.3d 670, 696–97) (cleaned up)). Additionally, "[w]hile an action taken by the President in excess of his statutory authority does not necessarily violate the Constitution, specific allegations regarding separation of powers may suffice." *Id.* at 1130 (cleaned up). As described above, plaintiffs contend that the "absence of any constitutional or statutory authority to impose conditions on the grants is dispositive and highlights the problems with [sic] the Unlawful DHS Conditions." Mot. at 8. Because plaintiffs argue that the President "lacked both statutory authority and background constitutional authority," their claims may properly be considered as constitutional under *Murphy Co. See id.*; 65 F.4th at 1130.

2. The DHS Conditions Conflict with Congress's Intent in Creating the Questioned Grants.

The separation of powers doctrine recognizes that the "United States Constitution exclusively grants the power of the purse to Congress, not the President." *City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018). "The [Appropriations] Clause has a 'fundamental and comprehensive purpose . . . to assure that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents.'" *United States v. McIntosh*, 833 F.3d 1163, 1175 (9th Cir. 2016) (quoting *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 427–28 (1990)). "Aside from the power of veto, the President is without authority to thwart congressional will by canceling appropriations passed by Congress." *City & Cnty. of S.F.*, 897 F.3d at 1232. Rather, executive agencies "literally ha[ve] no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 374 (1986). "Absent congressional authorization, the Administration may not redistribute or withhold properly appropriated funds in order to effectuate its own policy goals." *City & Cnty. of S.F.*, 897 F.3d at 1235.

As plaintiffs assert, "Congress has not authorized Defendants to impose grant conditions even *remotely* similar to the Unlawful DHS Conditions, which effectively prohibit any activity that the Administration would consider to be 'DEIA,' rewrite anti-discrimination law as it has long been understood, and force compliance with all executive orders." Mot. at 8. The Questioned

Grants do not confer such authority upon DHS or FEMA.

i. Infrastructure Security Grants

Plaintiffs first argue that the DHS Conditions contravene Congress's stated purposes in creating the Port Security Grant Program ("PSGP") and Transit Security Grant Program ("TSGP"). Mot. at 8–10. Congress established the PSGP to be used for "port security services and to train public safety personnel[.]" 46 U.S.C. § 70107. Similarly, under 6 U.S.C. § 1135(a)(1), Congress created the TSGP to "establish a program for making grants to eligible public transportation agencies for security improvements." Plaintiffs contend that neither program "include[s] vague prohibitions on DEIA or require compliance with any and all executive orders." Mot. at 9. In fact, the President's interpretation of DEIA *conflicts* with the infrastructure security grants, as Congress designated "transit security grant funds to support 'security response training' for transit employees, specifically including training in procedures to support 'individuals with disabilities and the elderly.'" *Id.* (citing 6 U.S.C. §§ 1135(b)(1)(L), (c)(5)).

The DHS Conditions attached to their grants prohibit the operation of "any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws." Mot. at 5; *see* Louk Decl. Ex. B at 17. While plaintiffs do not contest that they "regularly agreed to comply with federal antidiscrimination laws as a condition of federal funding in the past," they claim that the federal government has "called the meaning of those laws in question by purporting to interpret them far differently than previously understood by Congress, the executive, or the courts." Mot. at 13. As further explained in Section II.B.1, *supra*, the President's executive orders regarding DEIA initiatives appear to conflict with many of plaintiffs' grant programs, including the TSGP's security response training funding to support those with disabilities and the elderly. *See id.* at 9. Accordingly, plaintiffs have a strong claim that the DHS Conditions violate the separation of powers with respect to the infrastructure security grants by contravening Congress's clear intent in passing the relevant programs.

ii. Fire Related Grants

Plaintiffs also claim that the DHS Conditions would violate Congress's intent in establishing the Assistance to Firefighters ("AFG") and Staffing for Adequate Fire and Emergency

Response ("SAFER") grant programs. Mot. at 10–11. The AFG program is laid out in 15 U.S.C. § 2229, which provides funding to "protect[] the health and safety of the public and firefighting personnel . . . against fire, fire-related, and other hazards." 15 U.S.C. § 2229(c)(1)(A). SAFER is authorized by the same enactment, but is codified in a related provision, 15 U.S.C. § 2229a. SAFER requires the Administrator of FEMA to "make grants directly . . . for the purpose of increasing the number of firefighters to help communities meet industry minimum standards and attain 24-hour staffing to provide adequate protection from fire and fire-related hazards." *Id.* § 2229a(a)(1)(A).

Like the infrastructure security grants, the fire related grants do not authorize the DHS Conditions and in fact plainly contradict the programs. Plaintiffs cite another statute affecting both programs, 15 U.S.C. § 2205, which requires the Administrator of FEMA to "take such steps as [they] consider[] appropriate to educate the public and overcome public indifference as to fire, fire prevention, and individual preparedness." These "public education efforts *shall* include programs to provide specialized information for those groups of individuals who are particularly vulnerable to fire hazards, such as the young and the elderly." *Id.* (emphasis added). The President's ongoing executive orders targeting DEIA programs seemingly conflict with the purpose set out by Congress in the AFG and SAFER programs, as it contravenes the grants' goal in educating "particularly vulnerable" populations about fire safety. *See id.*; Mot. at 10–11.

iii. Homeland Security Grants

Three grant programs "designed to prepare for and prevent terrorist attacks"—the Homeland Security Grant Program ("HSGP"), the Urban Area Security Initiative ("UASI") and State Homeland Security Grant Program ("SHSP")—also are adversely affected by the DHS Conditions. Mot. at 11. UASI and SHSP program funds are meant to "help[] either high risk urban areas or local governments with 'preventing, preparing for, protecting against, and responding to acts of terrorism.'" *Id.* (citing 6 U.S.C. § 604(a); 6 U.S.C. § 605(a)). Plaintiffs claim that, "[c]onsistent with the previous grants identified, nothing in the statutes authorized the Unlawful DHS Conditions." *Id.*

Defendants' arguments in response to the HSGP funding are unconvincing. They say that because plaintiffs "are subrecipients of [HSGP] funds only and have no control over whether the funds are accepted," they have "no power to make any decision regarding whether to accept those funds and any decisions about whether those funds are ultimately passed down to Plaintiffs." Oppo. at 9. But as subrecipients, plaintiffs "reasonably expect to receive millions pursuant to these programs from their states based on predetermined allocations in the notices of funding opportunities ("NOFO"), statutory entitlement, and long-standing practice." Repl. at 2; *see, e.g.*, Kim Decl. ¶¶ 8–14; Bowman Decl. ¶¶ 5–10; Reed Decl. ¶¶ 16–24; RJN Ex. 5 at 54–55; RJN Ex. 6 at 65. While the amount of funding each state will receive is "not yet fixed," *see* Repl. at 3 n.3, these funds will inevitably "flow through the states to subrecipients" with the same DHS Conditions. Repl. at 3. That is sufficient to establish that plaintiffs will be adversely affected by the seemingly contradictory policies. *See id.*

iv. Other Preparedness and Non-Disaster Grants

Plaintiffs finally point to three grant programs—the Emergency Management Performance Grant ("EMPG"), Urban Search & Rescue ("US&R"), and the Hazard Mitigation Grant Program ("HMGP")—that they expect to receive with the DHS Conditions. Mot. at 11–12. EMPG is codified at 6 U.S.C. § 762, and directs FEMA to make grants "for all hazards" and to "provide an orderly and continuing means of assistance . . . to State and local governments in carrying out their responsibilities to alleviate the suffering and damage[.]" *See* 42 U.S.C. § 5121(b). Similarly, under 42 U.S.C. § 5165f, US&R provides funding for "cooperative agreements for training and exercises, the acquisition and maintenance of equipment, and certain medical monitoring, amongst other things." Mot. at 11. Finally, HMGP awards were established by Congress to "substantially reduce the risk of, or increase resilience to, future damage, hardship, loss, or suffering in any area affected by a major disaster." 42 U.S.C. § 5170c(a).

As with the other programs, in these three grants defendants are "conditioning [plaintiffs'] receipt of appropriated funds on compliance with the President's political agenda, even though Congress has not authorized Defendants to leverage federal funding for that agenda," to "usurp Congress's 'power of the purse' and violate bedrock separation of powers principles." *Id.* (quoting *City & Cnty. of S.F.*, 897 F.3d at 1231). Plaintiffs are likely to succeed on the merits in showing that the separation of powers are violated by the DHS and EO Conditions.

3. Title VI Does Not Absolve the Discrimination Condition of Violating the Separation of Powers.

Defendants contend that the Discrimination Condition does not violate the separation of powers because it is permissible under Title VI of the Civil Rights Act of 1964, in which agencies are "authorized and directed to effectuate . . . rules, regulations, or orders of general applicability" that comply with 42 U.S.C. § 2000d. 42 U.S.C. § 2000d-1. Section 2000d, in turn, states that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Defendants maintain that this authority requires DHS and FEMA to "ensure that all grants comply with federal law," including federal anti-discrimination law. Oppo. at 19. In their view, the Discrimination Condition in DHS and FEMA grants is "not novel," as "[e]very application for Federal financial assistance must, 'as a *condition* to its approval and the extension of any Federal financial assistance,' contain assurances that the program will comply with Title VI *and* with all requirements imposed pursuant to the executive regulations issued under Title VI." Oppo. at 11 (citing *Guardians Ass'n v. Civ. Serv. Comm'n of City of New York*, 463 U.S. 582, 629–30 (1983) (Marshall, J., dissenting)).

At oral argument, counsel for defendants reiterated this position, asserting that the Discrimination Condition only forbids "illegal DEI" practices, and that the burden is on plaintiffs to show their programs comply with current understandings of federal anti-discrimination law to receive funding. To this point, defendants cite *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023) ("*SFFA*"), where the Supreme Court considered "whether a university may make admissions decisions that turn on an applicant's race." *Id.* at 208. The Court found that Harvard University's race-based admissions programs were unconstitutional, as the purported educational benefits cited for the programs failed to meet strict scrutiny. *See id.* at 209–18. However, the Court noted that certain race-based admissions systems, including military academies, may have "potentially distinct interests" and were left unaddressed by the decision. *See id.* at 213 n.4.

Relying on *SFFA* and Title VI, defendants conclude that the Discrimination Condition is permissible in that it prevents "illegal" DEI programs from being implemented by plaintiffs. This argument falls flat. For one thing, Title VI squarely conflicts with various provisions of the Discrimination Condition. Section (3) of the Discrimination Condition notes that "DHS reserves the right to suspend payments in whole or in part and/or terminate financial assistance awards if the Secretary of Homeland Security or her designee determines that the recipient has violated any provision of [the Condition]." Standard DHS Terms, Section C.XVII(3). Title VI, however, sets out strict procedural requirements for agencies who decide to terminate grant funding:

> [N]o such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

42 U.S.C. § 2000d-1. The Discrimination Condition fails to provide grantees with notice and the ability to cure potential issues, despite Title VI mandating all agencies to provide such due process. *See id.*

The Hon. Rita Lin recently addressed the use of Title VI to cudgel anti-DEI policies in *American Association of University Professors et al. v. Trump et al.*, No. 25-cv-07864-RFL, 2025 WL 3187762 (N.D. Cal. Nov. 14, 2025) ("*AAUP*"). Judge Lin examined the legislative history behind Title VI, which showed that some members of Congress were concerned Title VI "might be used in a 'vindicative' or 'punitive' manner with respect to the 'cut off' of federal funds." *Id.* at *27. As a result, "Congress took pains to avoid this possibility" by adding the "procedural . . . safeguards against precipitous action." *Id.* The procedural posture of that case is slightly different, as the grantees had received notice of suspension letters without adhering to Title VI's procedural requirements. But given the Administration's Executive Orders and other guidance, it seems likely that defendants may use the Discrimination Condition's "right to suspend payments . . . if the Secretary of Homeland Security . . . determines that the recipient" has "advance[d] or promote[d] DEI, DEIA, or discriminatory equity ideology" to circumvent the clear procedural due process requirements afforded grant recipients under Title VI. Standard DHS Terms, Sections C.XVII(2)(a)(i), (3). Defendants have not provided any support suggesting DHS and FEMA would act otherwise.

Moreover, defendants dramatically overread the Court's holding in *SFFA*. It did not abrogate all constitutional or statutory precedent developed over the past seventy years to protect Americans from discrimination, which is the inference from their argument. The current Administration's vision of what anti-discrimination means, and the protections that must be afforded to *all* the people in this country, are somewhat at odds with that precedent, as discussed later. The DHS Conditions conflict with the purposes of the grants and are, at best, ambiguous.

B. Spending Powers

1. The Spending Power Constraints Apply to this Case.

The Spending Clause of the Constitution provides Congress with "broad power . . . to set the terms on which it disburses federal funds." *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 216 (2022). As a threshold matter, the parties dispute whether the Spending Clause applies to the Executive Branch as well as to Congress. Defendants contend that the Spending Clause does not apply in this case because it "limits Congress' power to legislate only and has no application to Executive Branch decisions about how to expend appropriated funds [by] Congress." Oppo. at 14. Plaintiffs, conversely, argue that the DHS Conditions are unlawful because they "exceed constitutional limits on the spending power." Mot. at 12.

Defendants rely on *Board of Education for the Silver Consolidated Schools v. McMahon*, 791 F. Supp. 3d 1272 (D.N.M. 2025), to support their framing of the Spending Clause. In *McMahon*, the court found that the "Spending Clause is only implicated 'when Congress imposes a spending or funding condition,'" not agency or executive decisions. *Id.* at 1288 (quoting *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 784 F. Supp. 3d 127, 162 (D.D.C. 2025)). I disagree. "[T]he Spending Clause applies not only to Congress, but the agencies implementing spending legislation." *S.F. Unified Sch. Dist. v. AmeriCorps*, 789 F. Supp. 3d 716, 744 (N.D. Cal. 2025) (Chen, J.). "An agency may not confer power upon itself," and has "no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n*, 476 U.S. at 374. The Ninth Circuit has concluded that the Spending Clause "appl[ies] to agency-drawn conditions on grants to states and localities just as they do to conditions Congress directly places on grants." *Barr*, 929 F.3d at 1175 n.6. There is "no reason why the addition of an agency middleman either expands or contracts Congress's power to 'provide for the . . . general Welfare.'" *Id.* (quoting U.S. Const. art. I, § 8, cl. 1). Judges within the Northern District of California have applied this reasoning in similar cases involving grant conditions involving DEIA. *See S.F. Unified Sch. Dist.*, 789 F. Supp. 3d at 744. Plaintiffs are well within their authority to raise a claim under the Spending Clause.

2. Ambiguity

The spending power is "subject to several general restrictions." *South Dakota v. Dole*, 483 U.S. 203, 207 (1987). First, the spending power "must be in pursuit of 'the general welfare,'" and courts should "defer substantially to the judgment of Congress." *Id.* (quoting *Helvering v. Davis*, 301 U.S. 619, 640–41). Second, "if Congress desires to condition the States' receipt of federal funds, it 'must do so unambiguously.'" *Id.* (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). Third, "conditions on federal grants might be illegitimate if they are unrelated 'to the federal interest in particular national projects or programs.'" *Id.* (citing *Massachusetts v. United States*, 435 U.S. 444, 461 (1978)). The DHS Conditions violate the second and third principles— they are ambiguous and do not relate to the content of the grants in question.

Plaintiffs have agreed to comply with federal antidiscrimination laws as a condition to their funding in the past. But they assert that "the federal government has now called the meaning of those laws in question by purporting to interpret them far differently than previously understood by Congress, the executive, or the courts—leaving it unclear what is expected under the terms." Mot. at 13. They point to at least five executive orders or directives that seem to create ambiguity.

First, on January 20, 2025, President Trump issued Executive Order 14168, entitled

"Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government." 90 Fed. Reg. 8,615. This order established a "policy of the United States to recognize two sexes, male and female," and prohibited an expansive understanding of gender identity. *Id.* Sec. 1; Sec. 2(f). It also prohibited federal funds from "be[ing] used to promote gender ideology," and required each agency to "assess grant conditions and grantee performances [to] ensure grant funds do not promote gender ideology." *Id.* Sec. 3(g).

That same day, President Trump issued Executive Order 14151, entitled "Ending Radical and Wasteful Government DEI Programs and Preferencing." 90 Fed. Reg. 8,339. This order targeted "illegal and immoral discrimination programs, going by the name 'diversity, equity, and inclusion' (DEI), into virtually all aspects of the Federal Government." *Id.* Sec. 1. The Director of the Office of Management and Budget, along with the Attorney General and the Director of the Office of Personnel Management, were directed to "coordinate the termination of all discriminatory programs, including illegal DEI and 'diversity, equity, inclusion, and accessibility' (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear." *Id.* Sec. 2(a). And each agency was required to "terminate . . . [all] 'equity-related' grants or contracts." *Id.* Sec. 2(b)(i).

On January 21, 2025, President Trump signed Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." 90 Fed. Reg. 8,633. This order claims that "critical and influential institutions of American society, including the Federal Government . . . have adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called 'diversity, equity, and inclusion' (DEI) or 'diversity, equity, inclusion, and accessibility' (DEIA) that can violate the civil-rights laws of this Nation." *Id.* Sec. 1. Agencies were ordered to "include in every contract or grant award" a term requiring recipients to "certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws." *Id.* Sec. 3(b)(iv)(B).

Later, on August 7, 2025, President Trump issued Executive Order 14332, "Improving Oversight of Federal Grantmaking." 90 Fed. Reg. 38929. The order criticized federal grants funding "diversity, equity, and inclusion and other far-left initiatives . . . [such as] Marxism, class warfare propaganda, and other anti-American ideologies." *Id.* Sec. 1. Accordingly, the order requires discretionary grant awards to "demonstrably advance the President's policy priorities" and "not be used to fund, promote, encourage, subsidize, or facilitate" "racial preferences or other forms of racial discrimination by the grant recipient," "denial by the grant recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic," "illegal immigration," or other "anti-American values." *Id.* Sec. 4(b)(i); 4(b)(ii)(A)–(D).

Attorney General Pamela Bondi ("Bondi") attempted to clarify these executive orders in a Department of Justice memorandum issued on July 29, 2025, titled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination." *See* RJN Ex. 4 [Dkt. No. 20-4] ("Discrimination Guidance Memo"). The purpose of this memorandum was to establish "best practices" "to help entities comply with federal antidiscrimination laws and avoid legal pitfalls," although the document did not impose "mandatory requirements." *Id.* at 1. The memorandum provides a "non-exhaustive list of unlawful practices that could result in revocation of grant funding," as well as potential "liab[ility] for discrimination" for funding recipients if they "knowingly fund the unlawful practices of contractors, grantees, and other third parties." *Id.* at 4. Such unlawful practices include "[f]acially neutral criteria (e.g., 'cultural competence,' 'lived experience,' geographic targeting) that function as proxies for protected characteristics . . . if designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics." *Id.* at 2.

i. **Discrimination Condition**

Plaintiffs argue that the Discrimination Condition, in light of the executive orders, "raise[] serious questions about what meaning and scope Defendants intend the Discrimination Condition[s] to carry" when accepting a grant. Mot. at 14. They point to numerous inconsistencies between federal law and the Discrimination Condition. For instance, plaintiffs contend that the use of "[f]acially neutral criteria . . . that functions as proxies for protected characteristics" does not actually violate federal anti-discrimination law as Attorney General Bondi suggests. *Id.*; Discrimination Guidance Memo at 2. Rather, the Supreme Court has "consistently declined to find constitutionally suspect" the adoption of race-neutral criteria, "even where the decision-maker was 'well aware' the race-neutral criteria 'correlated with race.'" Mot. at 14 (citing *Coal. For TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 885–86 (4th Cir. 2023) (cleaned up) (citing, *inter alia*, *Tex. Dep't of Hous. & Cnty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 545 (2015)).

Similarly, plaintiffs argue the Executive Orders do not comply with established anti-discrimination law. Plaintiffs point out that Executive Order 14168, targeting "gender ideology extremism," is "out of step with governing law extending critical sex-based protection to trans[gender] people." Mot. at 14; *see Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 662, 670 (2020) (recognizing "Title VII prohibits all forms of discrimination because of sex, however they may manifest themselves or whatever other labels might attach to them."). These contradictions are particularly harmful considering crucial terms in the orders and DHS Conditions are left ambiguous or undefined and thus provide plaintiffs with no guidance on how to adhere to the conditions. Mot. at 15–16.

Defendants contend that the Discrimination Condition is not ambiguous and is supported by Ninth Circuit and Supreme Court precedent. Oppo. at 15–16. They first cite *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981), which they claim stands for the proposition that "Congress must only make clear that acceptance of federal funds obligates States to comply with a condition" to satisfy the Spending Clause. *Id.* at 15. But this reading belies both *Pennhurst* and the facts of this case. In *Pennhurst*, the Court recognized that Congress must "express *clearly* its intent to impose conditions on the grant of federal funds so that the States can knowingly decide whether or not to accept those funds." 451 U.S. at 24 (emphasis added). "Knowing acceptance requires awareness of the conditions or an ability to 'ascertain what is expected of it.'" *S.F. Unified Sch. Dist.*, 789 F. Supp. 3d at 745 (quoting *Pennhurst*, 451 U.S. at 17). "By insisting that Congress speak with a clear voice, [States are enabled] to exercise their choice knowingly, cognizant of the consequences of their participation." *Pennhurst,* 451 U.S. at 17. But when a State's "potential obligations . . . are largely indeterminate," a grant may be ambiguous. *Id.* at 24.

Here, plaintiffs sufficiently demonstrate that the Discrimination Condition is ambiguous. The Condition provides, in relevant part, that grantees will "not . . . operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws." Standard DHS Terms, Section C.XVII. It then vaguely defines DEI as "diversity, equity, and inclusion," and DEIA to mean "diversity, equity, inclusion, and accessibility," without providing more detail or examples. *Id.* § C.XVII.1.a–b. Unlike DEI and DEIA, the definition of "discriminatory equity ideology" is incorporated by reference to Section 2(b) of Executive Order 14190 ("Ending Radical Indoctrination in K-12 Schooling"), which provides, in part:

> (b) [A]n ideology that treats individuals as members of preferred or disfavored groups, rather than as individuals, and minimizes agency, merit, and capability in favor of immoral generalizations, including that:
>
> (i) Members of one race, color, sex, or national origin are morally or inherently superior to members of another race, color, sex, or national origin;
>
> (ii) An individual, by virtue of the individual's race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
>
> (iii) An individual's moral character or status as privileged, oppressing, or oppressed is primarily determined by the individual's race, color, sex, or national origin;
>
> (iv) Members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to their race, color, sex, or national origin;
>
> (v) An individual, by virtue of the individual's race, color, sex, or national origin, bears responsibility for, should feel guilt, anguish, or other forms of psychological distress because of, should be discriminated against, blamed, or stereotyped for, or should receive adverse treatment because of actions committed in the past by other members of the same race, color, sex, or national origin, in which the individual played no part;
>
> (vi) An individual, by virtue of the individual's race, color, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion;
>
> (vii) Virtues such as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist or were created by members of a particular race, color, sex, or national origin to oppress members of another race, color, sex, or national origin; or

(viii) the United States is fundamentally racist, sexist, or otherwise discriminatory.

Id.

Read as a whole, the Discrimination Condition requires that plaintiffs refrain from "advanc[ing] or promot[ing]" DEI, DEIA, or discriminatory equity ideology in violation of federal anti-discrimination law. But the DHS does not explain how grantees could "advance or promote" these ideologies, nor does it explain how these terms fit into current understandings of anti-discrimination law. *See, e.g.*, *Bostock*, 590 U.S. at 662, 670 (recognizing "Title VII prohibits all forms of discrimination because of sex, however they may manifest themselves or whatever other labels might attach to them."); *Lam v. University of Hawai'i*, 40 F.3d 1551, 1562 (9th Cir. 1994) (recognizing that "the attempt to bisect a person's identity at the intersection of race and gender often distorts or ignores the particular nature of their [lived] experiences"); *Thakur v. Trump*, 148 F.4th 1096, 1107–08 (finding that "DEI [and] DEIA . . . are not merely neutral topics" and "convey the viewpoint that the exclusion of historically disadvantaged groups is undesirable," in violation of the "bedrock principle" that the government cannot "leverage its power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoints"); *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 95–96 (1973) (finding Title VII protects non-citizens, despite defendants defining "Federal anti-discrimination laws" as those that "protect individual Americans from discrimination.").[11] Nor does it define key terms within the Condition, as explained above.

That the Discrimination Condition is "rife with vagueness and ambiguity, leaving grantees

[11] Defendants also cite to *SFFA*, 600 U.S. 181, which they contend "recently reinforced longstanding precedent that stereotyping and discrimination against other races for the benefit of certain races are illegal." Oppo. at 16; 600 U.S. at 211–12. In their view, *SFFA*, along with Title VI, provide enough clarity about the scope of the DHS Conditions to make them unambiguous. But *SFFA* is not the smoking gun defendants claim it is. *SFFA* dealt with a unique issue—race-based admissions in higher education—and the Supreme Court never claimed for it to be a brightline rule. 600 U.S. at 213 n.4. Nowhere in *SFFA* does the Court prohibit all programs rooted in promoting diversity; rather, the Court "described these goals as 'commendable' and 'worthy' (though insufficient to justify race-based admissions)." *City of Seattle*, 2025 WL 3041905, at *7 (citing 600 U.S. at 214–15, 230). Nor does *SFFA* cover the entire scope of the Discrimination Condition, which targets *all* forms of "DEI, DEIA, or discriminatory ideology." Standard DHS Terms, Section C.XVII(3). While I understand defendants to cite *SFFA* as evidence of the current Supreme Court explaining the scope of federal anti-discrimination law, it is unpersuasive authority in light of the terms of the DHS Conditions that seemingly violate other well-settled anti-discrimination laws like *Bostock*, *Lam*, *Thakur*, and *Espinoza*.

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to speculate what is proscribed and what is permitted" is particularly concerning in light of the False Claims Act (the "FCA"), which is invoked by defendants in the DHS Conditions. *S.F. Unified Sch. Dist.*, 789 F. Supp. 3d at 746. The FCA imposes liability on "any person" who "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1)(A). Plaintiffs who violate the FCA may be subject to civil penalties and mandatory treble damages. 31 U.S.C. § 3729(a)(2); 28 C.F.R. § 85.5(a). The lack of clear definitions, coupled with the well-founded fear that the Department of Justice may use the FCA as a "weapon" against grant recipients, lends credence to plaintiffs' arguments that the Discrimination Condition is ambiguous. *See* RJN Ex. 12 ("Civil Rights Fraud Initiative Memo") [Dkt. No. 20-12] at 1–2. Plaintiffs are accordingly likely to show that the Discrimination Condition is ambiguous in violation of the Spending Clause.

ii. Executive Order Condition

Next, plaintiffs argue that the EO Condition is impermissibly ambiguous because it provides "little detail on what 'compliance' with the . . . Condition would require." Mot. at 6. Specifically, they claim that grantees "cannot possibly ascertain what it means to comply with all executive orders 'related to grants' that this Administration has issued *or might issue in the future*." *Id.* at 16 (emphasis in original). This is particularly true considering *Pennhurst*, plaintiffs claim, which found that the spending power does not allow for "post acceptance or 'retroactive' conditions" on funding. 451 U.S. at 25.

Defendants respond by asserting that plaintiffs "point to no Executive Orders related to grants that they are unsure apply," and instead "facially challenge the EO Conditions without explaining what possible hypothetical ambiguities exist." Oppo. at 19. Such compliance is "commonplace for recipients, who are regularly required to ensure their programs comply with all federal law, even as it shifts when Congress passes laws or the Supreme Court interprets laws differently." *Id.*

Even accepting defendants' argument as true, the EO Condition is, at best, ambiguous. Consider the following hypothetical: Berkeley, a plaintiff to this case, is approved for its $6.4 million and $16.5 million HMGP grants, which contain the EO Condition. Buddenhagen Decl. ¶¶

11–12. Berkeley accepts the grants with the attached EO Condition. Months after accepting the funding, President Trump issues an Executive Order that requires grantees to no longer follow the Supreme Court's decision in *Bostock*. "For purposes of all federal grants," the Order states, "discrimination 'because of sex' should be understood in reference to sex assigned at birth, not to sexual orientation or gender identity. Parties who recognize or promote a correlation between sex and sexual orientation are subject to termination of their grants." After receiving the grants, but before this hypothetical Executive Order, Berkeley's City Council adopts a policy interpreting any law preventing discrimination "based on . . . sex" to also include sexual orientation. In defendants' view, it would be appropriate for Berkeley to immediately lose their grant funding, as they accepted the grant on an "unambiguous" condition that they adhere to all future Executive Orders, even if those Orders contradict the Constitution, settled case law, or their local policies.

Such an outcome would be unjust. "When determining the ambiguity of conditions on federal grants, courts evaluate 'whether [a recipient] . . . would clearly understand . . . the obligations of the [conditions].'" *City of Fresno*, 2025 WL 2469330, at *6 (quoting *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006)). Here, it is not clear what compliance with the EO Condition would entail, as it fails to articulate to what extent plaintiffs would be expected to adhere to President Trump's Executive Orders. The EO Condition simply notes that grantees must comply with "requirements of Presidential Executive Orders related to grants." Standard DHS Terms, Section C.XXXI. Must plaintiffs comply with only those Executive Orders that focus exclusively on grants? Could the President "attach" a sentence at the end of every Executive Order discussing grant funding, thus requiring plaintiffs to adhere to every Order? What if the Executive Orders directly contradict Congress's intent in passing a grant program? Or contain conditions enjoined as unconstitutional? Such questions, even if they do not appear on the face of the EO Condition, raise concerns that render it impermissibly ambiguous.

In short, the EO Condition, as it is currently written and applied to the DHS Conditions, is ambiguous. To find otherwise would defy the power of Congress to confer upon agencies the authority to grant funding in the first place.

3. Relatedness

For a grant to adhere to the spending powers, its conditions must be "reasonably related to the purpose of the expenditure." *New York v. United States*, 505 U.S. 144, 172 (1992) (citation omitted); *Dole*, 483 U.S. at 207, 209 (Conditions on federal grants must be "reasonably calculated to address th[e] particular . . . purpose . . . for which the funds are expended"). Without a relationship between the conditions and the "purpose of the federal spending," "the spending power could render academic the Constitution's other grants and limits of federal authority." *New York*, 505 U.S. at 167.

The Discrimination and EO Conditions are not sufficiently related to the purpose of the DHS and FEMA grant programs. Defendants claim that the "reasonable relation" requirement is a "low-threshold" and "not demanding." Oppo. at 17 (citing *State ex rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1034 (N.D. Cal. 2018); *Barr*, 929 F.3d at 1175). Because the Supreme Court has "never struck down a condition on federal grants based on th[e] relatedness prong," defendants conclude that there is "no need . . . to break new ground." *Id.* (citing *Barr*, 929 F.3d at 1175). But *New York* recognized that conditions still need to "bear *some relationship* to the purpose of the federal spending." 505 U.S. at 144 (emphasis added). And here, as described above, the Discrimination and EO Conditions are not only unrelated to, but are inconsistent with, many of the grant programs in question. Such contradictions include:

- Hazard Mitigation Grant Program ("HMGP"): Requires the Administrator of FEMA to implement a grant program as authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which encourages issuance of grants to state and local governments who "identify[] and improv[e] the climate and natural hazard resilience **of vulnerable communities**." 6 U.S.C. § 762(a); 42 U.S.C. § 5121(b)(7).
- Fire Prevention and Control (applying to SAFER and AFG grants): The Administrator of the United States Fire Administration, within FEMA, "shall [create] programs to provide **specialized information for those groups of individuals who are particularly vulnerable to fire hazards, such as the young**

and the elderly." 15 U.S.C. § 2205.

- Assistance to Firefighters Grant ("AFG"): Allows for grantees to "establish wellness and fitness programs for firefighting personnel to ensure that [they] are able to carry out their duties as firefighters, **including programs dedicated to raising awareness of, and prevention of, job-related mental health issues**," as well as providing resources to train firefighters and others on "how to properly intervene with individuals with mental illness." 15 U.S.C. §§ 2229(c)(3)(E), (N).
- Transit Security Grant Program ("TSGP"): Requires Secretary of Transportation to "issue guidelines to ensure that, to the extent that recipients of grants under this section use contractors or subcontractors, **such recipients shall use small, minority, women-owned, or disadvantaged business concerns as contractors or subcontractors to the extent practicable**." 6 U.S.C. § 1135(h).

It is hard to imagine that the Discrimination and EO Conditions are "related" to these grants, as they squarely conflict with many of their statutory authorization provisions. *See S.F. Unified Sch. Dist.*, 789 F. Supp. 3d at 750 (finding that anti-DEI grant conditions likely did not "bear [any] relationship" to grants whose "statutory objectives . . . conflict[ed]" with the conditions).

Defendants' argument that non-discrimination conditions have *always* been attached to federal grant funding is unpersuasive. Even though previous DHS Terms and Conditions included provisions requiring grantees to follow "relevant Executive guidance," it does not appear that any other President has attempted to comprehensively override understanding of federal anti-discrimination law in the way this Administration seeks to through Executive Orders. Critical to any funding scheme is 42 U.S.C. § 2000d-1, which only authorizes agencies to issue "rules, regulations, or orders . . . consistent with achievement of the objectives of the statute authorizing the financial assistance." As shown above, these conditions are not consistent with Congress's goals in establishing these grants. The grant programs are unrelated to the Discrimination and EO Conditions attached to them.

C. APA

Finally, plaintiffs claim that defendants' DHS and EO Conditions violate the APA.

Plaintiffs are likely to succeed on these claims.

1. Final Agency Action

"[T]wo conditions must be satisfied for agency action to be 'final'" and subject to judicial review: "First, the action must mark the 'consummation' of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 177–78 (citing *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 113 (1948); *Post of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)). Finality "must be interpreted in a pragmatic and flexible manner." *Oregon Nat. Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006) (cleaned up).

Plaintiffs' claims clearly meet the first prong of *Bennett*. "Where an agency establishes conditions on grant eligibility, the agency has taken action that 'mark[s] the 'consummation' of the agency's decisionmaking process.'" *S.F. Unified Sch. Dist.*, 789 F. Supp. 3d at 740 (citing *Bennett*, 520 U.S. at 177–78); *see also City & Cnty. of S.F. v. Trump*, 783 F. Supp. 3d 1148, 1198–99 (N.D. Cal. 2025) (finding "the Bondi Directive's instruction to freeze the distribution of all DOJ funds to implement President Trump's directive to defund 'sanctuary' jurisdictions . . . clearly 'mark[s] the consummation of' the DOJ's 'decision-making process' that so-called 'sanctuary' jurisdictions are ineligible for federal funding"). Plaintiffs' complaint and motion for preliminary injunction both establish that the grants in question require adherence to the DHS Condition and the EO Condition to receive funding, indicating a consummation of the DHS and FEMA's decision-making process. Mot. at 19–20.

Similarly, "legal consequences will flow" from the DHS and EO Conditions because FEMA and DHS can deny or terminate grants should plaintiffs fail to adhere to their DEI-related requirements. *S.F. Unified Sch. Dist.*, 789 F. Supp. 3d at 740. Defendants candidly recognize that the DHS and EO Conditions "require[] the Plaintiffs to comply with Executive Orders," and that failure to do so may result in termination or rejection of a grant award. *See* Oppo. at 18. It is hard to imagine any scenario where the grant conditions would not be characterized as a "legal consequence[]" of the DHS and EO Conditions. *See S.F. Unified Sch. Dist.*, 789 F. Supp. 3d at 740.

Defendants argue in response that seven of plaintiffs' grants—namely, the HMGP, SAFER, AFG, FP&S, TSGP, PSGP, and STC grants—should not be considered final agency action because "they are discretionary" and are not subject to judicial review. Oppo. at 19–21. "[F]or discretionary grants," they assert, "agencies are free to reject applications in what is a competitive process." *Id.* at 20. Additionally, defendants claim that 5 U.S.C. § 701(a) "precludes review under the APA if the challenged agency action is 'committed to agency discretion by law.'" *Id.* (quoting *Heckler v. Chaney*, 470 U.S. 821, 828 (1985)). Because each of the seven grants provide "limited guidance for how [they] should be distributed," and "[n]one limit FEMA's discretion to issue funding, much less . . . prevent requiring compliance with federal anti-discrimination law or Executive Branch policy directives," defendants conclude that the grants are "presumptively unreviewable." Oppo. at 21.

Not so. "[T]he § 701(a)(2) exception for action committed to agency discretion [is read] 'quite narrowly, restricting it to 'those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion.'"" *Dept. of Com. v. New York*, 588 U.S. 752, 772 (2019) (quoting *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018)). The Ninth Circuit has made clear that the "fact that a statute contains discretionary language does not make agency action unreviewable." *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1068 (9th Cir. 2015) (quoting *Beno v. Shalala*, 30 F.3d 1057, 1066 (9th Cir. 1994)). Contrary to defendants' assertions, plaintiffs seek to challenge DHS and FEMA's decision to "adopt the new Unlawful DHS Conditions . . . to Plaintiffs' awards," which is "at odds with the statutory schemes that authorize the grants at issue." Repl. at 11. In similar circumstances, district courts and the Ninth Circuit have consistently found there to be final agency action. *See S.F. Unified Sch. Dist.*, 789 F. Supp. 3d at 741–42; *ASSN Int'l, Inc.*, 803 F.3d at 1068; *Martin Luther King Jr. Cnty. v. Turner*, 785 F. Supp. 3d at 882–84; *City of Fresno*, 2025 WL 2721390, at *6; *Housing Auth. of the City & Cnty. of S.F.*, 2025 WL 3187761, at *16–*17; *Am. Assn. of Univ. Profs. v. Trump*, No. 25-cv-07864-RFL, 2025 WL 3187762, *29–*31 (N.D.

Cal. Nov. 14, 2025). There is no reason to depart from this authority. Plaintiffs have sufficiently shown that nothing prevents me from reaching the merits of their claims.

2. APA Violation

Section 706 of the APA provides, in part:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall –
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity;
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
>
> (D) without observance of procedure required by law;

5 U.S.C. § 706. Plaintiffs claim that the DHS and EO Conditions violate the APA because they (1) exceed DHS and FEMA's statutory authority; (2) are contrary to a constitutional power; and (3) are arbitrary and capricious.

i. Statutory Authority and Contrary to Constitutional Powers

Plaintiffs contend that the defendants' "adoption, imposition, attachment, and enforcement of the Unlawful DHS Conditions are 'not in accordance with law,' 'contrary to constitutional right power, privilege, or immunity' and 'in excess of statutory . . . authority' within the meaning of the APA." Mot. at 20 (quoting 5 U.S.C. § 706(2)(A)–(C)). As explained in Sections II.A.2 and II.B.2–3 above, plaintiffs have sufficiently demonstrated that their separation of powers and spending clause claims will prevail on the merits because the DHS Conditions infringe upon the grants' statutory authority and Congress's intent in creating such grant programs. Because their APA claim reiterates the same legal theories, plaintiffs are likely to succeed in showing that the DHS Conditions infringe Congress's constitutional powers and are in "excess of [the DHS and FEMA's] statutory . . . authority." 5 U.S.C. § 706(2)(B)–(C).

ii. Arbitrary and Capricious

Next, plaintiffs argue that the DHS Conditions are arbitrary and capricious in violation of the APA. Under the APA, an agency decision is unlawfully arbitrary and capricious if:

> the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). While agencies have the discretion to change their policies, they must "provide a reasoned explanation for the change [and] display awareness that [it has a] changing position." *F.D.A. v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 568 (2025) (cleaned up). "When an agency rescinds a 'longstanding' position, it must consider any 'serious reliance interests' it may have engendered, 'determine whether they [are] significant, and weigh [them] against competing policy concerns.'" *Am. Assn. of Univ. Profs.*, 2025 WL 3187762, at *33 (quoting *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 30, 33 (2020)).

The crux of plaintiffs' argument is this: defendants adopted the DHS Conditions "without any authorization to do so on a grant-by-grant and statute-by-statute basis," and failed to provide an explanation for their stark departure from previous understandings of federal anti-discrimination law. *See* Mot. at 21–22. Further, that the DHS Conditions are imposed in a "systematic" fashion underscores that defendants "failed to consider the many statutory terms that actually *require* DHS to 'ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland,' 6 U.S.C. § 11(b)(1)(G), as well as certain statutory terms authorizing actions readily described as 'DEI' or 'DEIA.'" Mot. at 21.

Defendants respond that district courts, in reviewing agency decisions, "may not substitute its own policy judgment for that of the agency," and that all it should consider is whether the agency "acted within a zone of reasonableness." Oppo. at 22; *F.C.C. v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). They contend that the DHS and FEMA's decisions were completely reasonable as neither the Discrimination Condition nor the EO Condition is "new."

Oppo. at 22. Rather, the DHS has "long required recipients to comply with all anti-discrimination laws," and the FY 2025 version of the conditions are only "worded differently." *Id.* Even if the policy *were* new, defendants argue that plaintiffs do not explain "what reliance interests they had in the prior policy." *Id.* at 22–23.

Defendants' characterization of the Conditions is misleading. That the current DHS Conditions are merely"worded differently" ignores that their *interpretation* has starkly changed. As explained above, the Trump Administration's Executive Orders, the Discrimination Guidance Memo, and the DHS Conditions all depart from both federal anti-discrimination law and the statutory purposes of many grant programs without real explanation. This departure violates 2 C.F.R. § 3002.10, which requires federal agencies to "ensur[e] that specific Federal award conditions . . . are consistent with the [statutory] program design," and to explain "why the specific condition(s) is being imposed . . . [p]rior to imposing [such] conditions." 2 C.F.R. § 200.208(a); 2 C.F.R. § 200.208(d)(2). Given the lack of a "reasoned explanation" for such changes, plaintiffs have demonstrated that the DHS Conditions are likely arbitrary and capricious in violation of the APA. *See Wages & White Lion Invs., L.L.C.*, 604 U.S. at 568; *see also City of Fresno*, 2025 WL 2721390, at *9 (finding DEI conditional grants to be arbitrary and capricious in similar circumstances); *Illinois v. Fed. Emergency Mgmt. Agency*, 2025 WL 2716277, at *11–*12 (finding the Immigration Condition to be arbitrary and capricious as applied to FEMA grants).

III. IRREPARABLE HARM

"[S]imply showing some 'possibility of irreparable injury' fails to satisfy" the irreparable harm factor. *Nken*, 556 U.S. at 434–35 (citing *Abbassi v. INS*, 143 F.3d 513, 514 (9th Cir. 1998), *abrogated on other grounds*, *Singh v. Holder*, 658 F.3d 879 (9th Cir. 2011)). Rather, plaintiffs must provide sufficient evidence showing that they will be "irreparably injured absent" a preliminary injunction. *Id.* at 426.

Plaintiffs assert that some of them must decide by November 24, 2025, to "either accept unlawful conditions or lose federal funding earmarked for vital public safety and security services." Mot. at 23. They contend that any loss in funds would have an "immediate, irreparable, and reverberating harm[]" to the plaintiffs' communities. *Id.* "Even a temporary interruption in funding [would] disrupt[] procurement and management of programs that help prevent the loss of life and property during natural disasters and man-made threats." *Id.* (citing Wallis Decl. ¶ 22). Additionally, this "Hobson's choice" creates uncertainty that "undermines Plaintiffs' ability to do long-term planning," as they "cannot responsibly commit to multi-year projects, leaving them ultimately less prepared to address both current and emerging threats." *Id.* at 23–24. Because of these both temporary and permanent harms, plaintiffs conclude that an injunction is necessary. *Id.* at 24.

Defendants claim that plaintiffs' irreparable harm argument is unsuccessful because "fundamentally, the harms they assert are economic." Oppo. at 23. Economic harms do not by themselves warrant granting a preliminary injunction, as such funds can typically be recovered at a later date. *See L.A. Memorial Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980). But defendants fundamentally misread plaintiffs' arguments. While true that a party who "objects to a condition on the receipt of federal funding . . . [may simply] decline the funds," this ignores the reality that these plaintiffs face. *See* Oppo. at 24 (citing *Agency for Int'l Dev. v. All. For Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013)). The DHS and FEMA grants in question fund critical public safety and emergency management programs for over thirty million individuals. *See* Mot. at 23–24. Should plaintiffs choose to decline the funds, they place the "safety of their residents, communities, and first responders on the line," ironically contradicting Congress's decision to "appropriate[] billions of dollars to *support* local disaster preparedness and emergency response to prevent and mitigate [such] harms in the first place." Repl. at 14. Should plaintiffs choose to accept the funds, however, they are placed "at risk of arbitrary enforcement and legal liability under the FCA." *Id.* at 13.

I have previously found this Catch-22 to constitute irreparable harm, and I will do so again here. *See City & Cnty. of S.F.*, 779 F. Supp. 3d at 1082 (finding "irreparable injury in the form of budgetary uncertainty, deprivation of constitutional rights, and undermining trust between the Cities and Counties and the communities they serve"). Plaintiffs are likely to suffer both short- and long-term consequences, regardless of their decision, should I not grant a preliminary injunction in their favor.

IV. BALANCE OF EQUITIES AND PUBLIC INTEREST

In cases where the federal government is the opposing party, the balance of the equities and public interest factors merge. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). These two factors often turn on whether the district court finds a likelihood of success on the merits of the underlying claim. *See Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014); *see also Melendres*, 695 F.3d at 1002 (concluding it is "always in the public interest to prevent the violation of a party's constitutional rights") (cleaned up).

Plaintiffs' interest in ensuring their communities receive funding for critical infrastructure, public safety, and emergency response programs far exceeds defendants' interests. As indicated above, plaintiffs represent over thirty million individuals, and their DHS and FEMA grants provide funding to support these disaster and public safety initiatives. Mot. at 25. Many of the plaintiffs would be unable to otherwise fund these programs without the grants. *See* Schmit Decl. ¶¶ 14–15; Buddenhagen Decl. ¶¶ 17–18; Nachbar Decl. ¶ 7; Hawkesworth Decl. ¶ 16; Hewett Decl. ¶ 13; Bowman Decl. ¶¶ 11–13; Kim Decl. ¶ 17; Thomas Decl. ¶¶ 8–9; Heiser Decl. ¶¶ 25–26; Reed Decl. ¶ 27. Should plaintiffs be forced to decline the DHS and FEMA grants on account of the DHS Conditions, they would also lose millions of dollars that they would not be able to recoup in either the short- or long-term. Mot. at 25. They have a compelling interest in a preliminary injunction.

So too does the general public. The public is interested in seeing its communities receive funding for critical infrastructure and public safety initiatives—funding that is paid for by their federal tax dollars. And it is also interested in seeing regulations passed by Congress be properly implemented; should relief not be granted, many grant programs will be contradicted or overridden by the President's Executive Orders. These interests also strongly weigh in favor of granting a preliminary injunction.

Defendants' interests hold little weight. They contend that granting an injunction would "significantly disrupt DHS's ongoing consideration of grant applications for the upcoming year." Oppo. at 24. I do not doubt that being constrained by the Constitution and laws of the United States is more burdensome than ignoring their strictures. This does not outweigh the significant concern that plaintiffs will face should they be forced to either accept the DHS Conditions or forego federal funding altogether. That the government "may never recover" any lost funding from the injunction is also unconvincing, as Congress has already appropriated these funds via the statutory schemes described above. The balance of the equities and public interest favor granting plaintiffs' request for injunctive relief.

V. ISSUANCE OF A BOND

Finding all four *Winter* factors favor granting a preliminary injunction, defendants ask that the injunction "be accompanied by a bond" under Federal Rule of Civil Procedure 65(c). Oppo. at 25. To support their request, defendants cite to authority from the D.C. Circuit stating that "injunction bonds are generally required." *Id.* (citing *Nat'l Treasury Emps. Union v. Trump*, No. 25-5157, 2025 WL 1441563, at *3 n.4 (D.C. Cir. May 16, 2025) (per curiam)).

As defendants acknowledge, whether to require a security bond is within the court's discretion. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999). "It is within [a] district court's discretion to waive [the] bond requirement entirely if [there is] 'no evidence the party will suffer damages from the injunction,' or if there is a 'high probability of success that equity compels waiving the bond, the balance of equities overwhelmingly favors the movant . . . or the requirement of a bond would negatively impact the movant's constitutional rights." *City & Cnty. of S.F.*, 783 F. Supp. 3d at 1203 (citing *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878 (9th Cir. 2003); *Gilmore v. Wells Fargo Bank, N.A.*, No. C 14-2389-CW, 2014 WL 3749984, at *6 (N.D. Cal. July 29, 2014); *East Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 868 (N.D. Cal. 2018).

Defendants have not shown why a security bond is required in this case. They do not explain how the DHS and FEMA grants during the pendency of the order would result in damages for the government later. As in *City and County of San Francisco*, the balance of equities tips strongly in plaintiffs' favor, since "imposing a bond would negatively impact their access to the courts and their ability to assert their constitutional rights." *Id.* Defendants' request for the issuance of a bond is DENIED.

CONCLUSION

Plaintiffs' motion for a preliminary injunction is GRANTED.

It is ORDERED that:

1. Defendants and their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with them ARE RESTRAINED AND ENJOINED from directly or indirectly taking any action to withhold, freeze, or condition funds from the plaintiffs based on (1) Section C.XVII of the Standard DHS Terms (the "Discrimination Condition"); and (2) Section C.XXXI of the Standard DHS Terms (the "EO Condition").
2. This Order shall apply to the maximum extent provided for by Federal Rule of Civil Procedure 65(d)(2) and 5 U.S.C. §§ 705 and 706.

IT IS SO ORDERED.

Dated: November 21, 2025

William H. Orrick
United States District Judge