

SECTOR DELAWARE BAY  
AREA MARITIME SECURITY COMMITTEE (AMSC)

PORT SECURITY GRANT PROGRAM

SUB-GRANTEE AWARD AGREEMENT

between

MARITIME EXCHANGE FOR THE DELAWARE RIVER AND BAY  
As Fiduciary Agent

and

\_\_\_\_\_

This Agreement, between the Maritime Exchange for the Delaware River and Bay, as Fiduciary Agent (hereinafter referred to as the Maritime Exchange or Fiduciary Agent) and \_\_\_\_\_ (hereinafter referred to as \_\_\_\_\_ or Sub-grantee) is effective from this \_\_\_\_\_ day of \_\_\_\_\_, 2010 until September 30, 20\_\_\_. The Sub-grantee understands and agrees that this grant award shall be subject to and incorporate the following terms and conditions. The Sub-grantee shall include provisions appropriate to effectuate the purposes of these conditions in all contracts of employment, consultant's agreements, and contracts issued under its approved application.

**I. Authority and Purpose**

- A. This Agreement is undertaken pursuant to §46 USC 70107 and the Maritime Transportation Security Act of 2002 to pass through federal preparedness assistance awarded to the Sector Delaware Bay port area by the Federal Emergency Management Agency (hereinafter FEMA) under the Port Security Grant Program.
- B. **Purpose and Amount of Award:** This Agreement establishes the terms, conditions, assurances and certifications under which the Maritime Exchange as Fiduciary Agent shall award to Sub-grantee an allocation of funds from the Port Security Grant Program (hereinafter PSGP), Award Number \_\_\_\_\_, in the amount of \$\_\_\_\_\_ for \_\_\_\_\_ (Project Number #\_\_\_\_\_), in accordance with the Investment Justification (Exhibit A) and Budget (Exhibit B) approved by the Area Maritime Security Committee, which are attached hereto and made a part of this Agreement.

**II. Applicable Rules/Regulations**

- A. **Applicability of Federal Regulations and Conditions:** The Sub-grantee shall comply with all federal statutes, regulations and guidance applicable to administration of federal grants and cooperative agreements including but not limited to 28 C.F.R. Part

23, Criminal Intelligence Systems Operating Polices; latest NIEM (National Information Exchange Model) specifications regarding the use of XML (Extensible Markup Language) at <http://www.niem.gov>; 2 C.F.R. subtitle A, 44 C.F.R. Part 13 and Office of Management and Budget (OMB) Circulars, as applicable: A-21 Cost Principles for Educational Institutions; A-87 Cost Principles for State, Local and Indian Tribal Governments; A-122 Cost Principles for Non-Profit Organizations; A-102 Uniform Administrative Requirements for Grants and Agreements with State and Local Governments; A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and 48 C.F.R. Part 31 et. seq. Contract Cost Principles and Procedures. The Sub-grantee shall assure that these conditions apply to all recipients of assistance or funds. Copies of these OMB Circulars are available for download on the OMB website at [.whitehouse.gov/OMB/grants/index.html](http://whitehouse.gov/OMB/grants/index.html). All of the terms and conditions of Award No \_\_\_\_\_ are incorporated herein by reference and are made applicable to all sub-grantees as well as any sub-contracts entered into by sub-grantee under this Agreement. A copy of the Award No \_\_\_\_\_ may be found on the Maritime Exchange website.

- B. Federal Standard Assurances and Additional Assurances and Certifications:** The Sub-grantee agrees to be bound by and/or comply with the Federal Standard Assurances and certifications, including the SF 424 B (Assurances - Non-Construction Programs), Certifications Regarding Lobbying; and Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements. These must be signed in conjunction with this document.
- C. Non-Supplanting Stipulation:** The Sub-grantee shall not use grant funds to supplant state or local funds or other resources that would otherwise have been made available for this project. Further, if a position created by a grant is filled from within, the vacancy created by this action must be filled within 60 days. If the vacancy is not filled within 60 days, the Sub-grantee must stop charging the grant for the new position. Upon filling the vacancy, the Sub-grantee may resume charging for the grant position and must supply the name of the replacement person to the Maritime Exchange.
- D. Environmental and Historic Preservation Requirements:** Sub-grantee shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws, including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Sub-grantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. Sub-grantee shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA including, but not limited to communications towers, physical security enhancements, new construction and modifications to buildings that are 50 years old or greater. Sub-grantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-

evaluation for compliance with these EHP requirements. If ground-disturbing activities occur during project implementation, the Sub-grantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Sub-grantee will immediately cease construction in that area and notify the Fiduciary Agent and the appropriate State Historic Preservation Office.

- E. Buy American Act:** The Sub-grantee must follow the standards identified in the Buy American Act, 41 U.S.C. 10a-10d. The Buy American Act requires that all supplies and construction materials purchased be produced in the United States, unless such materials are not reasonably available, or such a purchase would not be in the public interest. Sub-grant recipients must follow the Federal Acquisition Regulations implementing the Buy American Act, 48 C.F.R. Part 25.
- F. Audit:** The Sub-grantee agrees to comply with the requirements of OMB Circulars A-133 for States, Local Governments, and Non-Profits or Government Auditing Standards, 1994 Revision for Commercial/For-Profit Organizations as applicable. If the Sub-recipient expends \$500,000 or more of Federal funds during its fiscal year, the sub-recipient must submit an organization-wide financial and compliance audit report. In addition, the Sub-grantee agrees to submit a copy of the project's annual audit (required) to the Maritime Exchange.
- G. Report Requirements:** The Sub-grantee agrees to submit, at such times and in such form as may be prescribed, reports as the Fiduciary Agent may reasonably require, such as quarterly financial reports (SF-425) not later than the 15th day of January, April, July and October and the Semi-Annual progress reports by the 15th of January and July during each year this Agreement is effective, as well as final financial reports and evaluation reports. The final progress report must be filed with the Fiduciary Agent within thirty (30) days after the termination of the last year of the grant award. The Fiduciary Agent must receive the final progress report prior to the final cost report being paid.
- H. Assignability:** The Sub-grantee shall not assign any interest in this grant Agreement and shall not transfer any interest, whether by assignment of novation, without the prior written consent of the Maritime Exchange, except as specified herein.
- I. Continuation Funding:** Sub-grantee understands that the awarding of this grant in no way assures or implies continuation of funding beyond the project duration indicated in this grant award. If a continuation application is approved, federal funds available under the current grant and corresponding cash matching funds must be expended or obligated and documented prior to the implementation of the continuation grant and expenditure of funds.
- J. Third Party Participation:** No contract or agreement may be entered into by the Sub-grantee for execution of project activities or provision of services to a grant project other than purchase of supplies or standard commercial or maintenance services which are not incorporated in the approved application. Any such arrangements shall provide

that the Sub-grantee will retain ultimate control and responsibility for the project and that these conditions shall bind the contractor. In any case, where the Sub-grantee enters into a contract with third parties, and when such contracts are not contrary to law, the Maritime Exchange shall not be obligated or liable for any breach of contract or other action in law to any party other than the original Sub-grantee.

- K. Waiver:** It is agreed that the failure of the Fiduciary Agent to insist upon the strict performance of any provision of this agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any rights assigned to Fiduciary Agent under this Agreement.
- L. Title to Property:** Effective control and accountability must be maintained for all personal property. Sub-grantees must adequately safeguard all such property and must assure that it is **used solely for authorized grant purposes**. Subject to the obligations and conditions set forth in OMB Circulars A-102 and A-110, title to Non-expendable property acquired in whole or in part with grant funds shall be vested in the Sub-grantee upon termination of the grant. Non-Expendable property is defined as any item having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. At the time the final request for payment is submitted, the Sub-grantee **must file** with the Maritime Exchange a copy of the Property Control Record Form (Exhibit C), listing all such property acquired with grant funds. Sub-grantees should exercise caution in the use, maintenance, protection, and preservation of such property during the period of project use.
- M. Indemnity and Hold Harmless:** Sub-grantee shall indemnify, defend and hold harmless the Fiduciary Agent and its officers, directors, employees and agents from and against all liability, loss, cost or expense (including attorney's fees) by reason of liability imposed upon the Fiduciary Agent, arising out of or related to Sub-grantee's performance under this Agreement, whether caused by or contributed to by the Fiduciary Agent or any other party indemnified herein, including but not limited to any misfeasance, malfeasance, negligent or intentional acts of Sub-grantee, its officers, agents, or employees, or its subcontractors or their officers, agents, and employees unless such loss is caused solely by the malfeasance, misfeasance, or negligence of the Fiduciary Agent, its officers, directors, employees or agents.
- N. Insurance:** During the term of this Agreement, Sub-grantee shall carry general liability, workers compensation, and automobile insurances, with minimum liability limits of \$1,000,000, and shall provide proof of such coverage upon signing of this Agreement. Prior to performing any services under this Agreement and at such times thereafter as the Maritime Exchange may reasonably request, Sub-grantee shall provide the Maritime Exchange with current certificates of insurance for all coverages required by the terms of this Agreement, naming the Maritime Exchange as an additional insured.
- O. Confidentiality and Non-Disclosure:** The Sub-grantee agrees to furnish the Maritime Exchange with certain confidential information relating to the grant award. The Maritime Exchange agrees to review, examine, inspect or obtain such confidential

information only for the purposes described herein, and to otherwise hold confidential and proprietary information or trade secrets in trust and confidence. The Maritime Exchange agrees not to disclose any such confidential information to any third party, except to the U.S. Government.

- P. Drug-free workplace:** The sub-grantee must comply with drug-free workplace requirements in Subpart B of 2 CFR part 3001, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

### III. Operational Procedures

- A. Project Implementation:** Sub-grantee agrees to implement this project within sixty (60) days following the effective date of the grant award, or this Agreement may be subject to cancellation. Evidence of project implementation is to be reported within the first sixty days.
- B. Accounting Requirements:** The Sub-grantee agrees to record all project costs, both federal and matching share, following generally accepted fund accounting procedures. A separate account number or cost recording system must separate all project costs from the Sub-grantee's other or general expenditures. Adequate documentation for all project costs, both federal and matching share must be maintained. Federal share documentation must clearly indicate that the funds expended were PSGP federal funds. Adequate documentation is defined in the Maritime Exchange Purchasing Process document attached to this Agreement as Exhibit D, which is made a part of this Agreement:
- C. Payment and Utilization of Funds:** Funds awarded are to be expended only for purposes and activities covered by the Sub-grantee's Investment Justification and Budget as attached hereto. Project funds (both federal and matching share) may not be expended prior to the grant award start date. Project funds will be made available through a reimbursement procedure as provided by the Fiduciary Agent's policy and procedure, as per Exhibit D. No payment of funds shall be made to Sub-grantee during any period of time within which Sub-grantee is in default on filing any informational or financial reports required by the Fiduciary Agent. All claims for reimbursement must be accompanied by copies of all supporting documentation (*i.e.*, time sheets, proof of payment, travel vouchers, invoices, *etc.*). Claims for reimbursement should be submitted as incurred. Payments will be adjusted to correct previous overpayment and disallowances or underpayments resulting from audit.
- D. Grant Adjustments:** The Sub-grantee must obtain prior written approval from the FA for major projects changes. These include, but are not limited to: (a) changes of substance in project activities, designs, or research plans set forth in the approved application; (b) changes in the project director and/or key professional personnel identified in the approved application; (c) changes in the approved budget with the exception of those changes permitted in accordance with provisions cited later in this

section, and (d) changes in the length of the grant period. Some project changes, such as purchase of equipment not included in the approved budget or changes or deviations which might alter the project scope or intent may also require prior approval of the AMSC and/or FEMA.

The Sub-grantee may deviate from quantities of equipment items in the approved budget as long as the total dollar amount of the equipment budgeted is not exceeded, provided written notification is submitted to the Maritime Exchange. Both the FA and the Sub-grantee shall maintain this notification in the project file. Sub-grantees may not add to the specified equipment list without prior approval of FEMA unless the total dollar amount of the equipment budgeted is not exceeded.

- E. Procurement Standards, Procedures and Reimbursement:** The Sub-grantee shall adhere to and use the Maritime Exchange Purchasing Process, Exhibit D.
- F. Monitoring:** Sub-grantee agrees to allow the Maritime Exchange reasonable access to the grant project for the purposes of monitoring programmatic progress and the financial and business management aspects of the grant award to ensure that project objectives are met and funds are spent and accounted for properly. Access shall include inspection of financial and program reports, site visits, teleconferences and/or such other means necessary for the Fiduciary Agent to carry out its monitoring obligations.

#### **IV. Termination of Grant**

This Agreement will terminate upon completion of the project or \_\_\_\_\_, whichever is earlier.

- A.** This grant may be terminated or fund payments suspended by the Fiduciary Agent where there is a failure to comply with the terms and conditions of:
  - 1. the grant application form and attachments;
  - 2. the grant award contract;
  - 3. any state or federal law to which compliance is required;
  - 4. an audit report which includes audit exceptions not answered to the satisfaction of the Fiduciary Agent.
- B.** Upon such finding, the Fiduciary Agent shall notify the Sub-grantee in writing to correct any deficiencies found. If said deficiencies are not corrected within twenty (20) days, the Fiduciary Agent will suspend or cancel the grant application after furnishing written notice to the Sub-grantee.
- C.** This Agreement may be terminated by the Sub-grantee in the event there is a failure of the Fiduciary Agent to perform any of its obligations under this Agreement.
- D.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government

restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

## **V. Conflict of Interest**

Personnel and other officials connected with this grant shall adhere to the requirements given below:

- A. Advice:** No individual, public official, or employee of a state or unit of local government or of nongovernmental grantees/Sub-grantees shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which these funds are used, where to his knowledge he or his immediate family, partners, organization other than a public agency in which he is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.
  
- B. Appearance:** In the use of these grant funds, officials or employees of state or local units of government and nongovernmental grantees/Sub-grantees shall avoid any action which might result in, or create the appearance of:
  - 1. using his or her official position for private gain;
  - 2. giving preferential treatment to any person;
  - 3. losing complete independence or impartiality;
  - 4. making an official decision outside official channels; or
  - 5. affecting adversely the confidence of the public in the integrity of the government or the program.

## **VI. Products/Income from Grants**

- A. Copyrights:** Except as otherwise provided in the terms and conditions of this Agreement, the Sub-grantee or a contractor paid through this grant is free to copyright any books, publications or other copyrightable materials developed in the course of or under this grant. However, the federal awarding agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes:
  - 1. the copyright in any work developed under this grant or through a contract under this grant; and,
  - 2. any rights of copyright to which a Sub-grantee or subcontractor purchases ownership of with grant support.

The Federal government's rights identified above must be conveyed to the publisher and the language of the publisher's release form must ensure the preservation of these rights. Any royalties received from copyrights and patents during the grant period

may be retained by the Sub-grantee.

- B. Publications:** The Sub-grantee may publish, at its own expense, the results of grant activity without prior review by the Fiduciary Agent provided that any publication (written, oral, or visual) contains an acknowledgement of Port Security Grant Program support. The Sub-grantee agrees that any publication (written, visual, or sound, but excluding press releases, newsletters, and issue analyses) issued by the Sub-grantee describing programs or projects funded in whole or in part with Federal funds, shall contain the following statement:

"This project was supported by FY \_\_\_ Port Security Grant Program, awarded by the Federal Emergency Management Agency, U.S. Department of Homeland Security."

- C. Program Income:** All program income generated by this grant during the project period must be reported to the Fiduciary Agent following the month earned and must be put back into the project to be used to reduce the federal participation in the program in accordance with OMB Circular A-110.

## **VII. General Provisions**

### **A. Dispute Resolution:**

1. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration. The mediation is to be conducted in the English language in the city of Philadelphia, Pennsylvania.
2. Any dispute arising out of or relating to this Agreement, or the breach thereof, that cannot be resolved by mediation within 30 days from the first notice of such dispute shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction. The arbitration will be conducted in the English language in the City of Philadelphia, Pennsylvania, in accordance with the United States Arbitration Act. For disputes of \$75,000 or less, both parties shall agree on appointment of a single arbitrator. For disputes in excess of \$75,000 three arbitrators shall be appointed in accordance with such rules unless otherwise agreed between the parties. The arbitrator or each arbitrator so appointed shall be a licensed attorney. The award of the arbitrator or arbitrators shall be accompanied by a statement of the reasons upon which the award is based.

- B. Modification:** No modification, termination or attempted waiver of this Agreement or any provision hereof shall be valid unless in writing signed by both parties to this Agreement.

**C. Notices:** All notices, requests, demands and other communications required or permitted to be made under this Agreement shall be in writing and shall be given by personal delivery, by certified mail, return receipt requested, first class postage prepaid, or by nationally recognized overnight delivery service, in each case addressed to the party entitled to receive the same at the address specified below. Either party may change the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice. Notice shall be deemed to be effective, if personally delivered, when delivered; if mailed, at midnight on the third business day after being sent by certified mail; and if sent by nationally recognized overnight delivery service, on the next business day following delivery to such delivery service. If to the Maritime Exchange:

Maritime Exchange for the  
Delaware River and Bay, Inc.  
Lisa Himber, Vice President  
240 Cherry Street  
Philadelphia, PA 19106  
Lisa.himber@maritimedelriv.com

If to Sub-Recipient:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

MARITIME EXCHANGE FOR THE  
DELAWARE RIVER AND BAY, INC.

WITNESS

\_\_\_\_\_  
BY: Dennis Rochford                      date  
President

\_\_\_\_\_

SUB-RECIPIENT

WITNESS

\_\_\_\_\_

\_\_\_\_\_

BY: Authorizing Official                      date  
Title

**EXHIBIT A**  
**INVESTMENT JUSTIFICATION**

**EXHIBIT B**  
**BUDGET DETAIL**



EXHIBIT C

**PORT SECURITY GRANT PROGRAM  
Property Control Record**

| <b>Question</b> |   | <b>Information</b> |
|-----------------|---|--------------------|
| 1)              | Grant #                                       |                    |
| 2)              | Sub-Grantee Name                              |                    |
| 3)              | Submitted By                                  |                    |
| 4)              | Asset Tag #                                   |                    |
| 5)              | Asset Description/Name                        |                    |
| 6)              | Vendor Model # (if any)                       |                    |
| 7)              | Physical Location<br>(Address or Description) |                    |
| 8)              | Total Cost of Asset*                          | \$                 |
| 9)              | Matching Amount                               | \$                 |
| 10)             | Vendor Name                                   |                    |
| 11)             | Vendor Invoice #                              |                    |
| 12)             | Date Acquired                                 |                    |

\* Indicate cost including federal and match portions

## EXHIBIT D

### MARITIME EXCHANGE PURCHASING PROCESS

#### A. Procurement Procedures and Requirements for Federal Grants

1. Codes of conduct. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. Appropriate disciplinary action shall be taken for violations of the above mentioned standards by officers, employees, or agents of the Maritime Exchange or Sub-grantee.

2. Competition. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Maritime Exchange and Sub-grantees should be alerted to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade.

3. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors who develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

4. Allowable Costs. Only costs identified as “allowable costs” and meeting all accounting requirements under Circular A-110 can be incurred under Port Security Grant Program (PSGP) grants.

#### 5. Procurement Requirements.

(a). Procurers must avoid purchasing unnecessary items.

(b). Where appropriate, an analysis is to be made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(c). Solicitations for goods and services provide for all of the following:

(i). A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain

features which unduly restrict competition.

(ii). Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii). A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv). The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v). The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi). Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(d). Positive efforts will be made to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Procurers shall take all of the following steps to further this goal.

(e). Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(f). Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(g). Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(h). Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(i). The type of procuring instruments allowed are as follows: fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(j). Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

(k). On request by the Federal awarding agency and/or Fiduciary Agent, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., should be available for review/audit when any of the following conditions apply:

- (i). The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$100,000) AND is to be awarded without competition or only one bid or offer is received in response to a solicitation.
- (ii). The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.
- (iii). The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under sealed bid procurement.
- (iv). A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

6. Cost and price analysis. Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

7. Procurement records. Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a). Basis for contractor selection, (b). justification for lack of competition when competitive bids or offers are not obtained, and (c). basis for award cost or price.

8. Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

9. Contract provisions. The provisions below as well as those listed in Appendix A of this document shall be included in all contracts. The following provisions shall also be applied to subcontracts.

- (a). Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- (b). All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (c). An award that requires the contracting (or subcontracting) for construction or facility exceeding \$100,000, the minimum requirements shall be as follows:
  - (i). A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond,

certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(ii). A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(iii). A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(iv). Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(v). All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(vi). All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions as listed on pages 5 and 6 of this document, as applicable.

## **B. Reimbursement Procedures for Sub-grantees**

The Sub-grantee agrees that this is a reimbursement based contract. All requests for reimbursement must reflect actual costs that have been incurred and services/items received by the Sub-grantee. The Sub-grantee must submit all required fiscal reports, supporting documentation and program progress reports. Failure to meet these requirements may result in the rejection of associated vouchers.

The process for requesting and receiving payment is as follows:

\_\_\_ 1. Purchase Order. Upon receipt of approval of the award by the Federal Grantor (FEMA), the Maritime Exchange will prepare a numbered Purchase Order with the amount allocated per Sub-grantee as approved by the FEMA. This Purchase Order will identify the amount reimbursable by the PGSP Federal funding and the matching requirement. The purchase order will also detail the amounts by account type based on the budget worksheet SF424A.

\_\_\_ 2. Request for Reimbursement. The Sub-grantee will use the "payment request" form to be provided by the Maritime Exchange upon contract award. The form is to be completed with name, address, and the amount requested by each account type (e.g. personal travel, equipment, etc.). Back up information providing proof of expense is required for reimbursement and should be given in the form of copies of vendor invoices, payroll printout, and/or any other documents

proving a valid expense was incurred. Upon payment by FEMA, the Maritime Exchange will reimburse the non-matching portion of the expense. As an example, if \$100,000 has been incurred and submitted to the Maritime Exchange and 25% matching is required, the Maritime Exchange will reimburse \$75,000. Unless noted otherwise, it will be assumed that the reimbursement percent is pro-rata amongst each account type.

Adequate documentation includes:

- (i). **Personnel:** Documentation must include time and attendance records, payroll periods, payment rate and a brief description of the service(s) provided. The employee and supervisor must sign time sheets. This requirement applies to all project personnel paid from grant funds, federal money and local matching contributions.
- (ii). **Contractual Services:** For individual consultants, documentation must include time and attendance records showing time period, payment rate, hours per day and service(s) provided. The consultant and the project director must sign documentation. In case of organizations performing professional services, documentation must include a detailed billing indicating services performed or product delivered payment rate consistent with contractual agreement, and approval by the project director.
- (iii). **Travel:** Documentation must be detailed, to include date, destination, reason for travel, and itemization of expenses. Receipts for parking, tuition, registration, etc., and lodging are required. Expense vouchers will include the signature of the employee and supervisor.
- (iv). **Supplies and Other Operating Expenses and Equipment:** Documentation must include purchase order authorization, audited vendor invoices approved by the project director (and other higher authorizing official, if appropriate). Sub-grantee further agrees to maintain a current inventory of all project equipment.

\_\_\_ 3. Approval. Up to two signatures are required for all requests for payment to be processed. All reimbursement requests will be signed by a Maritime Exchange officer at levels provided by Maritime Exchange procedures:

- \$10,000 and under: Vice President
- \$25,000 and under: President
- \$25,001 and over: Two Officers of the Corporation

Reimbursement for any invoices (regardless of amount) against a contract that exceeds the small purchase threshold of \$100,000 must be signed verifying that the goods and/or services have been received; are in working order and have not violated any terms of the Purchasing Procedures. Invoices for contracts over the \$100,000 threshold may be subject to on-site reviews by the Maritime Exchange as identified in section 5(k) of the Purchasing Procedures.

The following are causes for rejection of payment requests and are examples not limited to these reasons:

- (a) Is not an allowable cost under Circular A-110 and did not receive approval by the FEMA Program Manager.
- (b) Item or service could not be verified to exist and/or operate when requested.
- (c) Requested supporting documentation such as receipts were not supplied when requested.
- (d) Purchase Order is fully expended.
- (e) An up to date progress report has not been filed.
- (f) Vendor is debarred

\_\_\_ 4. Funding Request. The Maritime Exchange will make a request to DHS for payment within five (5) business days of receiving the approved reimbursement request. The Maritime Exchange will issue a check to the Sub-grantee within fifteen (15) business days of receiving the approved reimbursement request, however in most cases the check will be issued within five (5) business days.

\_\_\_ 5. Payments. Payments will be made by check with signature levels that follows Maritime Exchange standard procedures as outlined above.

## **Appendix A Contract Provisions**

All contracts, awarded under the PSGP-VII Supplemental including small purchases, shall contain the following provisions as applicable:

**1. Equal Employment Opportunity** - All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)** - All contracts and subgrants in excess of \$2000 for construction or repair awarded by Maritime Exchange, Sub-grantees and contractors shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), 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 shall 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 is otherwise entitled.

**3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)** - All construction contracts awarded by the Maritime Exchange, Sub-grantees and contractors of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. A copy of the current prevailing wage determination issued by the Department of Labor shall be placed in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination.

**4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)** - Where applicable, all contracts awarded in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall 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 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that 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.

**5. Rights to Inventions Made Under a Contract or Agreement** - Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Maritime Exchange in any resulting invention in accordance with 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.

**6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended** - Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Maritime Exchange.

**8. Debarment and Suspension (E.O.s 12549 and 12689)** - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

**Appendix B**  
**Special Conditions**

INSERT FEMA SPECIAL CONDITIONS