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## **FFY 2011 HOMELAND SECURITY GRANT PROGRAM**

### **GRANT INFORMATION AND IDENTIFICATION**

**CFDA Number:** 97.067

**CFDA Title:** Homeland Security Grant Program

**Award Year:** FFY 2011

**Federal Agency:** Department for Homeland Security/FEMA

**Pass-Through Agency:** Kentucky Office of Homeland Security

### **IDENTIFICATION AND OBLIGATIONS OF THE PARTIES**

#### **First Party**

The Office of the Governor, Kentucky Office of Homeland Security (KOHS) (as the First Party), in the exercise of its lawful duties, has determined that the functions outlined in this Agreement and in the attachment(s) thereto, are necessary for compliance with either the statutory and regulatory requirements of the U.S Department of Homeland Security or the Kentucky Office of Homeland Security.

#### **Second Party**

The Second Party is the contractor as defined by KRS 45A.030(9) and agrees that they are willing, available and qualified to perform the scope of work as detailed in this agreement and as specifically outlined.

#### **Campaign Finance**

The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

#### **Cancellation Clause**

Claim or performance disputes will be in accordance with KRS Chapter 44 and KRS Chapter 45A. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days written notice.

#### **Change of Circumstances**

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the party's ability to carry out any of its obligations under this Agreement.

#### **Choice of Law and Forum Provision**

The laws of the Commonwealth of Kentucky shall govern all questions as to the execution, validity,

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interpretation and performance of this agreement. Furthermore, the parties hereto agree that any legal action that is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

**Confidentiality**

The Second Party agrees that any employee or agent acting in its behalf will abide by the state and federal rules and regulations governing access to and use of information provided to the Second Party by the First Party in the administration of this contract.

**Conflict of Interest Laws and Principles**

The contractor certifies that he/she is legally entitled to enter into this contract agreement with the Commonwealth of Kentucky, and by holding and performing the terms and conditions of this agreement will not violate any conflict of interest statute, including but not limited to KRS 45A.330-45A.340, 45A.990, KRS 164.390, and KRS 11A.040 of the Executive Branch code of ethics, relating to the employment of former public servants

**Data Collection/Analysis Limitations**

No data collected and provided by the First Party shall be used for any other purpose other than those expressly authorized in this Agreement.

**Effective Date**

All Memoranda of Agreement are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Government Contract Review Committee. However, Memoranda of Agreements \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes only, as provided under KRS 45A.700.

**Entire Agreement**

This Agreement forms the entire agreement between the parties as to scope and subject matter of this Agreement. All prior discussions and understandings concerning the scope and subject matter are superseded and incorporated by this Agreement.

**Extensions and Amendments to this Agreement**

The terms and conditions of this agreement may be extended or amended according to the provisions of KRS Chapter 45A, and are subject to the approval of the Director of KOHS, the Secretary of the Finance and Administration Cabinet and/or the Legislative Research Commission's Government Contracts Review Committee. The agency reserves the right to modify this agreement for the addition or deletion of requirements deemed necessary by the agency with the mutual agreement of both parties in accordance with KRS 45A.030(2); KRS 45A.210(1); (200 KAR 5:311)

Any mutually agreed upon changes to the agreement must be approved, in writing, by KOHS prior to implementation or obligation and shall be incorporated in written amendments to this agreement. This procedure for changes to this approved agreement is not limited to budgetary changes, but also includes changes of substance in project activities and changes in the project director or key professional

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personnel identified in the approved application.

**Liability and Indemnity**

Nothing in this Agreement shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during the performance of this Agreement. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during the performance of this Agreement shall be determined according to applicable law.

**Notices**

Any notice, transmittal, approval, or other official communication made under this Agreement shall be in writing and shall be delivered by hand, facsimile transmission, or by mail to the other party.

**Severability**

If any provision of this Agreement is held judicially invalid, the remainder of the Agreement shall continue in full force and effect to the extent not inconsistent with such holding.

**Sole Benefit**

This Agreement is intended for the sole benefit of the First Party, the Second Party, and, if implementing a federal grant program element, the United States Government, and is not intended to create any other beneficiaries.

**Subcontractor Requirement**

The Second Party agrees that all requirements of this agreement shall also be applicable and binding on any subcontractor the Second Party may contract with to meet the statement of work, method of payment, and deliverables of this agreement. All Second Party subcontractors are subject to First Party approval.

**Successors and Assigns**

This Agreement may not be assigned by a party without the express written consent of the other party. All covenants made under this Agreement shall bind and inure to the benefit of any successors and assigns of the parties whether or not expressly assumed or acknowledged by such successors or assigns.

**Violation of Tax and Employment Laws**

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above

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statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

### **Waiver of Breach**

If a party waives enforcement of any provision of this Agreement upon any event of breach by the other party, the waiver shall not automatically extend to any other or future events of breach.

### **IDENTIFICATION OF THE SUBJECT MATTER OF THE CONTRACT**

#### **Environmental Planning and Historic Preservation (EHP)**

The Second Party acknowledges that any project considered to constitute construction or renovation must receive prior approval from FEMA before any work or financial expenditures can be made.

#### **Intellectual Properties**

The contractor agrees that any formulae, methodology, other reports and compilations of data provided by the First Party to the contractor for the purposes of meeting the terms and conditions of this agreement, or as developed, prepared or produced by the contractor for use by the First Party under the scope of services of this agreement shall be the exclusive property of the First Party. Any use of this material for purposes other than those specifically outlined and authorized by this agreement without prior approval and without appropriate acknowledgement of the funding source, shall be grounds for immediate termination of this agreement and possible criminal prosecution.

#### **Kentucky Wireless Interoperability Executive Committee**

Any portion of this agreement that involves data or voice communication equipment or projects, including data or voice interoperability equipment or projects shall be presented by the Second Party for action by the Kentucky Wireless Interoperability Executive Committee (KWIEC). Furthermore, it is a condition of this agreement that all recommendations of the KWIEC, will be accepted and implemented by the Second Party prior to the commencement of the project addressed in this agreement. A copy of the KWIEC decision will be provided to the First Party by the Second Party.

#### **Mutual Aid and Interoperability Memorandum of Understanding**

The Second Party and any other local entities receiving benefit from these grant funds must have a Mutual Aid Memorandum of Understanding with the Kentucky State Police.

#### **NIMS Requirements**

In accordance with HSPD-5, *Management of Domestic Incidents*, the adoption of the national Incident Management System (NIMS) is a requirement to receive Federal preparedness assistance through grants, contracts, and other activities.

#### **Project Implementation**

The subgrantee agrees to implement this project within 60 days following the grant award effective date or be subject to automatic cancellation of the grant.

#### **Property Control**

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 purposes. Sub grantees should exercise caution in the use, maintenance, protection and preservation of such property.

*Title:* Subject to the obligations and conditions set for in 28 CFR Part 66, title to non-expendable

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property acquired in whole or in part with grant funds shall be vested in the subgrantee. 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.

*Use and disposition:* Equipment shall be used by the subgrantee in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by federal funds. When use of the property for project activities is discontinued, the subgrantee shall request, in writing, disposition instructions from KOHS prior to actual disposition of the property. Theft, destruction, or loss of property shall be reported to KOHS immediately.

*Inventory:* The Second Party must submit to the First Party an inventory of all equipment purchased with these federal funds. This inventory must include the item inventory number, item description, and site where equipment is located.

### **Property Purchased by the First Party (KOHS)**

Property purchased by the First Party for the purposes of fulfilling the requirements of the scope of services for this agreement, and which may include, but not be limited to, furniture, computer software, computer hardware, office equipment, and supplies are considered the property of the First Party and shall remain the property of the First Party.

### **Scope of Work**

This grant will provide reimbursement funding to the Second party for the specific scope of work described in the Extended Description. Successful completion by the Second party shall include the deliverables as listed in the Extended Description.

## **CONSIDERATION AND CONDITIONS FOR PAYMENT**

### **Availability of Federal Funds**

This grant award is contingent upon availability of federal funds approved by Congress.

### **Consultant Rate**

Approval of this agreement does not indicate approval of any consultant rate in excess of \$450 per day. A detailed justification must be submitted and approved by the First Party and FEMA's National Preparedness Directorate prior to obligation or expenditure of such funds.

### **Deobligation of Grant Funds**

All grant funds must be deobligated within forty-five (45) calendar days of the end of the grant period. Failure to deobligate the grant in a timely manner may result in an automatic deobligation of the grant by KOHS.

### **Earliest Date of Payment**

No payment on this agreement shall be made before completion of the review procedure provided for in KRS 45A.705, unless alternate actions occur as set out in KRS 45A.695(7). Payments on personal service contracts and memoranda of agreements shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

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### **Financial Management System**

The Second Party agrees to establish and/or maintain a financial management system which shall provide for:

*Accurate, current, and complete disclosure of the financial results of the functions/services performed under this agreement in accordance with the reporting requirements as set forth in this Agreement and attachment(s) thereto; Records that identify the source and application of funds for activities/functions/services performed pursuant to this contract agreement. These records shall contain information pertaining to federal and/or state funds received, obligations, un-obligated balances, if applicable, assets, liabilities, expenditures and income;*

*Effective control over and accountability for all funds, property, and other assets. The Second Party shall safeguard all such assets and shall assure that they are used solely for authorized purposes in the provision of functions/services under this agreement;*

*Procedures for determining reasonableness, and allowability of costs in accordance with the terms and conditions of this Agreement and any attachment(s) thereto; and Accounting records that are supported by source documentation.*

### **Funding Out Provision**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

### **Interest Income**

Grant funds not reimbursed immediately to a vendor, subcontractor, etc. must be placed in an interest bearing account. The applicant agrees to be accountable for all interest earned with respect to these grant funds. Interest earned by this grant during the project must be reported and returned to KOHS quarterly.

### **Obligation of Grant Funds**

Grant funds may not be obligated prior to the effective date of this approved legal agreement. No obligations are allowed after the end of the grant period.

### **Payments**

Payments to applicants

*Payment by the First Party to the Second Party shall be made only after receipt of appropriate, acceptable and timely request for reimbursements. Reimbursement requests will be submitted on approved Kentucky Office of Homeland Security forms as provided by the First Party and submitted in written format to the First Party by the Second Party. The method of reimbursement will be through electronic funds transfer.*

Final Request for Reimbursements:

*Final request for reimbursements must be submitted to the First Party no later than 45 days after the expiration of this agreement.*

### **Procurement**

The acquisition of goods and services by the Contractor in performance of this Agreement shall be according to applicable Commonwealth of Kentucky contracting procedures, the standards and procedures contained in applicable federal regulations (44 CFR).

### **Purchasing and Specifications**

The Second Party certifies that he/she will not attempt in any manner to influence any specifications to be restrictive in any way or respect, nor will he/she attempt in any way to influence any purchasing of

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services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and Section 7.09 that pertains to conflict of interest laws and principles, “He” is construed to mean “They” if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then “He” is construed to mean any person with an interest therein.

### **Program Income**

The applicant agrees to be accountable for all interest or other income earned by the Second Party with respect to grant funds or as a result of conduct of the project (sale of publications, registration fees, service charges, rebates, etc.). All program income generated by this grant during the project must be reported to KOHS quarterly and must be put back into the project or be used to reduce the grantor participation in the program. The use or planned use of all program income must have prior written approval from KOHS.

### **Reimbursement**

The Second Party is required to sign this Agreement with the Kentucky Office of Homeland Security to gain access to its allocated funds. No funds will be forwarded. The funds are allocated on a cost reimbursement basis. To receive reimbursement, the Second Party is required to provide the Kentucky Office of Homeland Security with copies of all obligation documents executed under this agreement.

### **Social Security**

The Second Party and all other parties so contracted for services under the scope of service of this agreement agree that they are cognizant that the First Party is not liable for Social Security contributions pursuant to 42 U.S Code, Section 418, relative to the compensation of the Second Party during the effective dates of this agreement.

### **Total Amount of Contract and Contract Period**

The Second Party’s and/or Third Party’s fees and expenses relative to the performance of the scope of services outlined in this Agreement and in the detailed attachment(s) (if applicable) to this agreement shall not exceed the Total Order Amount as set forth in this Agreement. The subject services and functions are to be performed during the term of this agreement. It is understood that this agreement is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and/or Legislative Research Commission’s Government Contract Review Committee per KRS 45A.705.

### **Transfer of Funds**

The Second Party is prohibited from transferring funds between programs (State Homeland Security Program, Urban Areas Security Initiative, Law Enforcement Terrorism Prevention Program, Citizens Corps Program, Emergency Management Performance Grant, Interoperable Emergency Communications Grant Program, Buffer Zone Protection Program, Emergency Operations Center Grant Program, Metropolitan Medical Response System or any other Federal Grant Program).

### **Travel**

The contractor shall be paid no travel expense unless and except as specifically authorized under the specifications of this agreement. Unless otherwise indicated, travel reimbursement shall be in accordance with 200 KAR 2:006. No travel time nor travel expenses will be included in the Second Party’s or any subcontractor’s hourly rates.

### **Other Expenses**

The contractor shall be reimbursed for no other expenses than those, which have been expressly detailed in this Agreement. All direct charges shall be documented to support the direct charging of the expense. Where applicable

*Invoicing for fee: The contractor’s fee shall be original invoice(s) and shall be documented by the*

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*contractor. The invoice(s) must conform to the method prescribed in the specifications of this contract.*

*Invoicing for travel expenses: The contractor must follow instructions prescribed in the specifications of this agreement. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and all other miscellaneous expenses.*

*Invoicing for miscellaneous expenses: The contractor must follow instructions prescribed in the specifications of this agreement. Expenses submitted shall be documented by certified copies.*

### **Vendor Verification**

The Second Party must verify that any vendor providing services is not on the *Federal Excluded Parties Listing System* prior to any contracts funded by federal funds. This verification must be submitted with each reimbursement request to verify that the vendor is not debarred at the time of order. This information may be found at [www.epls.gov](http://www.epls.gov). Reimbursement will not be made without this verification.

### **Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

The

### **Administrative and National Policy Requirements**

The Second Party must, in addition to the assurances made as part of their application, comply and require each of its subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, OMB circulars, terms and conditions of the award, and the approved application.

The Second Party agrees that all allocation and use of funds under this agreement will be in accordance with the appropriate FFY2011 Homeland Security Grant Program Guidelines and Application Kit and must support the goals and objectives included in the State Homeland Security Strategy and Urban Area Homeland Security Strategies.

### **Applicable Law**

This Agreement is incidental to the implementation of a federal grant program. Accordingly, this Agreement shall be governed by and construed according to Federal law as it may affect the right, remedies, and obligations of the United States.

### **Governing Regulations**

To the extent not inconsistent with the express terms of this Agreement, the provisions of 44 CFR, Uniform Administrative Requirements for Grants and Cooperative Agreements and OMB Circular A-87 which are hereby incorporated by reference as if fully set forth herein, shall govern this agreement.

**Standard Financial Requirements.** The Second Party shall comply with all applicable laws and regulations. A non-exclusive list of regulations commonly applicable to DHS grants are listed below:

#### ***Uniform Administrative Requirements***

*44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*

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*2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (formerly OMB Circular A-110)*  
*3.44 CFR Part 10, Environmental Considerations*

**Cost Principles**

*2 CFR Part 225, Cost Principles for State, Local, and Indian tribal Governments (formerly OMB Circular A-87)*

*2 CFR Part 220, Cost Principles for Educational Institutions (formerly OMB Circular A-21)*

*2 CFR Part 230, Cost Principles for Non-Profit Organizations (formerly OMB Circular A-122)*

*Federal Acquisition Regulations (FAR), Part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations*

*48 CFR 31.2, Federal Acquisition Regulations (FAR), Contracts with Commercial Organizations*

**Audit Requirements**

*OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations*

If the Second Party is a governmental entity, an institution of higher learning or other nonprofit institution, the Second Party shall procure an audit in accordance with the United State's Office of Management and Budget (OMB) Circular A-133, as amended. All subrecipients of federal grant money disbursed under this Agreement are required, under OMB Circular A-133, to have an audit conducted annually if they expend \$500,000 or more in total federal grant money during the subrecipient's fiscal year. All subrecipients that are signatories to this Agreement must ensure that an annual audit is performed and provide a copy of their annual audit to the Kentucky Office of Homeland Security no later than 30 days after receipt of the final audit report. OMB Circular A-133, Audit of the States, Local Governments, and Non-Profit Organizations (6/24/97, includes revisions published in the Federal Register 6/27/03

**Compliance with Federal Civil Rights Laws and Regulations**

The Second Party is required to comply with Federal civil rights laws and regulations. The Second Party must comply with all regulations, guidelines, and standards adopted under the below listed statutes. The Second Party is also required to submit information, as required, to the DHS Office for Civil Rights and Civil Liberties concerning its compliance with these laws and their implementing regulations. Specifically, the grantee is required to provide assurances as a condition for receipt of Federal funds that its programs and activities comply with the following:

***Title VI of the Civil Rights Act of 1964, as amended, 42. U.S.C. §2000 et. seq.***

Provides that no person on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program or activity receiving Federal financial assistance. Title VI also extends protection to persons with Limited English Proficiency (LEP). (42 U.S.C. §2000d et seq.).

***Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §1681 et. seq.***

Provides that no person, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance.

***Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794***

Provides that no otherwise qualified individual with a disability in the United States, shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or subject to discrimination in any program or activity receiving Federal financial assistance.

***The Age Discrimination Act of 1975, as amended, 20 U.S.C. §6101 et. seq.***

Provides that no person in the United States shall, on the basis of age, be excluded from participation in,

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be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

***Services to Limited English Proficient (LEP) Persons***

Recipients of FEMA financial assistance are required to comply with several Federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended. These laws prohibit discrimination on the basis of race, color, religion, natural origin, and sex in the delivery of services. National origin discrimination includes discrimination on the basis of limited English proficiency. To ensure compliance with Title VI, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The grantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities.

Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. For additional information, see <http://www.lep.gov>.

**Certifications and Assurances.** Certifications and assurances regarding the following apply:

**Buy American Act**

The Second Party agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction materials. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide the EC and NAFTA end products and construction materials are exempted from application of The Buy American Act. First Party encourages second party to use Kentucky services and/or products.

**Classified National Security Information**

As defined in Executive Order (EO) 12958, as amended, means information that has been determined pursuant to EO 12958 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

No funding under this award shall be used to support a contract, subaward, or other agreement for goods or services that will include access to classified national security information if the award recipient has not been approved for and has access to such information.

Where an award recipient has been approved for and has access to classified national security information, no funding under this award shall be used to support a contract, subaward, or other agreement for goods or services that will include access to classified national security information by the contractor, subawardee, or other entity without prior written approval from the DHS Office of Security, Industrial Security Program Branch (ISPB), or, an appropriate official within the Federal department or agency with whom the classified effort will be performed.

Such contracts, subawards, or other agreements shall be processed and administered in accordance with the DHS -Standard Operating Procedures, Classified Contracting by States and Local Entities,- dated July 7, 2008; EOs 12829,12958, 12968, as amended; the National Industrial Security Program Operating Manual (NISPOM); and/or other applicable implementing directives or instructions. All security requirement documents are located at: <http://www.dhs.gov/xopnbiz/grants/index.shtm>

**Copeland “Anti-Kickback” Act**

The Second Party agrees that it will comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in United States Department of Labor Regulations (29 CFR Part 3). As applied to this

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agreement, the Copeland “Anti-Kickback” Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

***Debarment and Suspension – Executive Orders 12549 and 12689***

Provides protection from fraud, waste, and abuse by debarment or suspending those persons that deal in an irresponsible manner with the Federal government. The recipient must certify that they are not debarred or suspended from receiving Federal assistance. For additional information, see 44 CFR Part 17.

**Disadvantaged Business Requirement**

To the extent that the Second Party uses contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

***Drug-free Workplace Act, as amended, 41 U.S.C. §701 et seq.***

The Second Party agrees that it will comply with the provisions of the Drug-Free Work Place Act and maintain a drug-free workplace. The Final Rule, Government-Wide Requirements for Drug-Free Workplace (Grants), issued by the United States Office of Management and Budget is incorporated herein by reference and the Second Party covenants and agrees to comply with all the provision thereof, including any amendments to the Final Rule that may hereafter be issued.

The Second Party agrees to publish a statement about its drug-free workplace program and give a copy of the statement to each employee (including consultants and temporary personnel) who will be involved in award-supported activities at any site where these activities will be carried out. Also, place(s) where work is being performed under the award (i.e., street address, city, state, and zip code) must be maintained on file. The Second Party must notify KOHS of any employee convicted of a violation of a criminal drug statute that occurs in the workplace. For additional information, see 44 CFR Part 17.

The Second Party hereby certifies the following by signing this agreement:

*That neither it nor its principals and/or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or State department or agency. Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall submit an explanation in writing to the First Party.*

**Duplication of Benefits.** There may not be a duplication of any Federal assistance, per 2 CFR Part 225, Basic Guidelines Section C.3 (c), which states: Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Authority may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements. Non-governmental entities are also subject to this prohibition per 2 CFR Parts 220 and 230 and FAR Part 31.2.

**Environmental Standards**

The recipient shall comply with all applicable Federal, State, and local environment 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, and Executive Orders on Floodplains (11988), Wetlands (11990), and Environmental

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Justice (12898). Failure of the recipient to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. Recipient 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. Recipient 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 disturbance activities occur during project implementation, the recipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the recipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any construction activities that have been initiated prior to the full environmental and historic preservation review could result in a non-compliance finding.

The Second Party shall provide such information as may be requested by KOHS to ensure compliance with any applicable environmental laws and regulations. Second Party shall not undertake any construction project without the approval of First Party and DHS, as required by the grant guidance.

### **Equipment Marking**

The Second Party agrees that, when practicable, equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the Kentucky Office of Homeland Security and the U.S. Department of Homeland Security" in order to facilitate their own audit processes, as well as Federal audits and monitoring visits, which may result from receiving Federal funding. Additionally, any equipment purchased with funding under this agreement shall, when practicable, bear on it the logos of the Kentucky Office of Homeland Security and the U.S. Department of Homeland Security.

### **Federal Debt Status**

The recipient may not be delinquent in the repayment of any Federal debt. Examples of relevant debt include delinquent payroll or other taxes, audit disallowances, and benefit overpayments. (OMB Circular A-129) (Refer to SF 424, item number 17)

### **Federal Energy Policy Legislation**

Second Party must comply with the following:

*None of the funds made available shall be used in contravention of the Federal buildings performance and reporting requirements of Executive Order No. 13123, part 3 of title V of the national Energy Conservation Policy Act (42 U.S.C 851 et seq), or subtitle A of title I of the Energy Policy Act of 2005 (including the amendments made thereby).*

*None of the funds made available shall be used in contravention of section 303 of the Energy Policy Act of 1992 (42 U.S.C 13212).*

### **Fusion Center**

The Second Party agrees that funds utilized to establish or enhance state and local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines and achievement of a baseline level of capability as defined by the Fusion Capability Planning Tool.

### **Hatch Act**

The Second Party agrees to comply with the Hatch Act (5 U.S.C. 1501 –1508 and 7324 – 7328), as implemented by the United States Office of Personnel Management at 5 CFR Part 151, which limits

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political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

***Hotel and Motel Fire Safety Act of 1990***

In accordance with section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. §2225a, the recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds, complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. §2225.

**Integrating Individuals with Disabilities into Emergency Planning**

The Second Party must integrate individuals with disabilities into any emergency planning activity.

***Section 504 of the Rehabilitation Act of 1973, as amended***

Prohibits discrimination against people with disabilities in all aspects of emergency mitigation, planning, response, and recovery by entities receiving financial funding from FEMA. In addition, Executive Order 13347, Individuals with Disabilities in Emergency Preparedness, signed in July 2004, requires the Federal government to support safety and security for individuals with disabilities in situations involving disasters, including earthquakes, tornadoes, fires, floods, hurricanes, and acts of terrorism. Executive Order 13347 requires the Federal government to encourage consideration of the needs of individuals with disabilities served by State, local, tribal, and territorial governments in emergency preparedness planning.

***Lobbying. 31 U.S.C. §1352, Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions***

Prohibits the use of Federal funds in lobbying members and employees of Congress, as well as employees of Federal agencies, with respect to the award or amendment of any Federal grant, cooperative agreement, contract, or loan. FEMA and DHS have codified restrictions upon lobbying at 44 CFR Part 18 and 6 CFR Part 9.

Second Party understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval.

**National Initiatives**

All award recipients must be aware of and support the following national preparedness initiatives:

***HSPD-8: National Preparedness***

The Second Party must be aware of and support HSPD-8 that establishes policies to strengthen the preparedness of the United States to prevent and respond to threatened or actual domestic terrorist attacks, major disasters, and other emergencies by requiring a National Preparedness Goal, establishing mechanisms for improved delivery of federal preparedness assistance to state and local governments, and outlining actions to strengthen preparedness assistance to state and local governments, and outlining actions to strengthen preparedness capabilities of federal, state, and local entities.

***National Preparedness Reporting Compliance***

*The Government Performance and Results Act of 1993 (Public Law 103-62)* requires that the Department collect and report performance information on all programs. For grant programs, the prioritized Investment Justifications and their associated milestones provide an important tool for assessing grant performance and complying with these national preparedness reporting requirements. FEMA will work with grantees to develop tools and processes to support this requirement. FEMA anticipates using this information in making future-year grant program funding decisions. Award

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recipients must agree to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within their grant agreement. This includes any assessments, audits, or investigations conducted by DHS, the Office of the Inspector General, or the Government Accountability Office (GAO).

***National Response Plan (NRP)***

The Second Party must be aware of and support and in all respects comply with the NRP that is an all-discipline, all-hazards plan that establishes a single, comprehensive framework for the management of domestic incidents. It provides the structure and mechanisms for the coordination of federal support to state and local incident managers and for exercising direct federal authorities and responsibilities. The NRP assists in the important homeland security mission of preventing terrorist attacks within the United States; reducing the vulnerability to all natural and manmade hazards and minimizing the damage and assisting in the recovery from any type of incident that occurs. Compliance with the NRP coordinating structures, protocols and processes is essential for ensuring a national comprehensive approach to domestic incident managements

**Non-supplanting Requirement**

Grant funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. The Second Party may be required to supply documentation certifying that a reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds.

**Preference for U.S. Flag Carriers**

The Second Party agrees to comply with 46 U.S.C. 1241(b) and regulations issued there under (46 CFR Part 381) concerning the use of privately-owned United States flag commercial vessels.

**Protected Critical Infrastructure Information (PCII)**

The PCII Program, established pursuant to the Critical Infrastructure Act of 2002 (Public Law 107296) (CII Act), created a framework which enables members of the private sector, States, local jurisdictions, and tribal nations to voluntarily submit sensitive information regarding critical infrastructure to DHS. The Act provides statutory protection from public disclosure and civil litigation for CII that is validated as PCII. When validated as PCII, the information can only be shared with government employees who complete the training requirement, who have

Homeland security duties and a need to know. PCII accreditation is a formal recognition that the covered government entity has the capacity and capability to receive and store PCII appropriately.

**Publications Statement**

Second Party agrees that all publications created with funding under any grant award shall prominently contain the following statement: "This document was prepared under a grant from the Kentucky Office of Homeland Security (KOHS), Federal Emergency Management Agency's Grant Programs Directorate (FEMA/GPD) within the U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of KOHS or FEMA/GPD or the U.S. Department of Homeland Security." Additionally, any publication created with funding under this agreement shall bear on it the logos of the Kentucky Office of Homeland Security and the U.S. Department of Homeland Security.

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### **Royalty-free License**

The Second party acknowledges that FEMA reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (a) the copyright in any work developed under an award or sub-award; and (b) any rights of copyright to which an award recipient or sub-recipient purchases ownership with Federal support. Award recipients must agree to consult with FEMA regarding the allocation of any patent rights that arise from, or are purchased with, this funding.

### **Technology Requirements.**

**National Information Exchange Model (NIEM).** FEMA requires all grantees to use the latest NIEM specifications and guidelines regarding the use of Extensible Markup Language (XML) for all grant awards. Further information about the required use of NIEM specifications and guidelines is available at <http://www.niem.gov>.

**Geospatial Guidance.** Geospatial technologies capture, store, analyze, transmit, and/or display location-based information (i.e., information that can be linked to a latitude and longitude). FEMA encourages grantees to align any geospatial activities with the guidance available on the FEMA website at <http://www.fema.gov/grants>.

**28 CFR Part 23 Guidance.** FEMA requires that any information technology system funded or supported by these funds comply with 28 CFR Part 23, *Criminal Intelligence Systems Operating Policies*, if this regulation is determined to be applicable.

**Best Practices for Government Use of CCTV.** DHS recommends that grantees seeking funds to purchase and install closed circuit television (CCTV) systems, or funds to provide support for operational CCTV systems, review and utilize the guidance in *Best Practices for Government Use of CCTV: Implementing the Fair Information Practice Principles* available on the DHS Privacy Office website at <http://www.dhs.gov/xlibra>

### **Additional Provisions**

The Second Party must inform the KOHS immediately of any information received from any source alleging a violation of a prohibition below:

Any recipient, their employees, subrecipients under this award and subrecipients' employees may not Engage in severe forms of trafficking in persons during the period of time that the award is in effect; Procure a commercial sex act during the period of time that the award is in effect; or Use forced labor in the performance of the award or sub awards under the award.

FEMA, as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient, or employee is determined to have violated the above prohibition.

### **Reporting Requirements**

Reporting requirements must be met throughout the life of the grant. Any reports or documents prepared as a result of this grant shall be in compliance with Federal "plain English" policies, directives,

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etc.

### **Certification (Access to Records)**

The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884

### **Closeout**

The First Party will close out this award when it determines that all applicable administrative actions and all required work of the grant have been completed. Within 45 days after the expiration or termination of this agreement, the Second party must submit all financial, performance, and other reports required as a condition of this grant.

### **Cooperation**

It is specifically recognized by the Second Party that it is their duty to reasonably accommodate the informational requests of the First Party in a timely manner and in the form they are requested. The Second Party agrees that the sole and final authority on compliance with any Federal or State regulations, statues and guidelines with respect to the grant rests with the Second Party and as such, will ensure that every effort is made to honor that compliance guidance.

### **Exercise Evaluation and Improvement Reports**

**Any Second Party funded to provide Exercises must report on any scheduled exercise and ensure that an After Action Report (AAR) and Improvements Plan (IP) are prepared for each exercise conducted with FEMA support (grant funds or direct support) and submitted to the FEMA Grants and Preparedness Community of Interest (COI) on the Homeland Security Information Network (HSIN) within 90 days following completion of the exercise.**

***Required submissions: AARs and IPs (as applicable)***

### **Financial and Compliance Audit Report**

The Second Party agrees to submit each year financial information on the total amount of federal funds expended. If the Second Party expends \$500,000 or more in total federal grant money during the subrecipient's fiscal year, an annual audit will be performed and a copy provided to the Kentucky Office of Homeland Security no later than 30 days after receipt of the final audit report. OMB Circular A-133, Audit of the States, Local Governments, and Non-Profit Organizations.

***Required submissions: Verification of federal expenditures and Single Audit (as applicable)***

### **Monitoring**

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The Second Party shall submit, at such times and in such form as may be prescribed, such reports as the first party may reasonably require, including financial reports, progress reports, final financial reports and evaluation reports. The Second Party shall also comply with any and all site visit monitoring performed by the First Party. The Second Party agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.

***Required Submissions: Any other requested reports and site visits***

### **Quarterly Reports**

**The Second Party agrees to submit within 30 days after the end of each calendar quarter a written report on all programmatic and financial activities. Quarterly reports will be submitted on approved Kentucky Office of Homeland Security forms as provided by the First Party.**

***Required Submissions: Quarterly Reports***

### **Open Records**

Request for information under the Kentucky Open Records Act which may reasonably lead to the discovery of any information related to homeland security records as defined by KRS 61 may not be disclosed without the written approval of the Director of KOHS.

### **Performance Timeline**

Upon request by the First Party, the Second Party will provide summaries of progress made to date on this agreement. Should the First Party find the performance unacceptable, the First Party shall provide written notification and may cancel the agreement immediately.

### **Central Contractor Registration and Universal Identifier Requirements**

Upon request by the First Party, the second Party must provide its DUNS number.

### **Retention of Records**

Records must be retained for three years from the day that the Kentucky Office of Homeland Security submits its final expenditure report for the federal grant funding this project.

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*Second Party*

\_\_\_\_\_  
**Second Party**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

*Commonwealth of Kentucky, Kentucky Office of Homeland Security*

\_\_\_\_\_  
**First Party**

\_\_\_\_\_  
**Signature**  
**Kentucky Office of Homeland Security Executive Director**

**Title**

\_\_\_\_\_  
**Date**

*Approved as to form and legality:*

\_\_\_\_\_

\_\_\_\_\_  
**Date**