

ORDINANCE NO. 2009-020

ORIGINAL

DELAWARE COUNTY EMERGENCY MANAGEMENT

2007 HOMELAND SECURITY STATE WIDE EXERCISE / \$17,400.00  
ESD# C44P-9-464A

WHEREAS, the Delaware County Emergency Management Agency has received a grant from the Indiana Department of Homeland Security; and

WHEREAS, it is necessary to establish funds in the Auditor's Office into which the grant proceeds will be deposited.

NOW, THEREFORE, BE IT ORDAINED that the Auditor shall establish a non-reverting fund titled the 2007 Homeland Security State Wide Exercise EDS#C44P-9-464A in the amount of \$17,400.00, and shall issue a budget fund number with respect to these funds. Said funds are exempt from needing appropriation.

Dated this 1 day of JUNE, 2009.

DELAWARE COUNTY COMMISSIONERS

Donald H. Dumuck, Commissioner

Todd R. Donati, Commissioner

Larry W. Bledsoe, Jr. Commissioner

ATTEST:

Judy Rust  
Auditor of Delaware County

**2007 HOMELAND SECURITY GRANT PROGRAM SUB-GRANT AGREEMENT  
EDS# C44P-9-464A**

This 2007 Homeland Security Grant Program Sub-Grant Agreement (hereinafter called the "Agreement") is made and entered into by the Indiana Department of Homeland Security (hereinafter called the "State") and the Board of Commissioners of Delaware County (hereinafter called the "Sub-grantee"), for the purposes and subject to the terms and conditions agreed to herein.

**1. Purpose of Agreement**

The purpose of this Agreement is to enable the State to make a sub-grant to the Sub-grantee from the U.S. Department of Homeland Security, Office of Grants and Training, Fiscal Year 2007 Homeland Security Grant Program, Award Number 2007-GE-T7-0026, for the allowable costs of this project (the "Project") as described in Exhibit A of this Agreement, attached hereto and fully incorporated herein.

**2. Amount of Sub-grant**

This sub-grant is for an amount not to exceed \$17,400.00. This sub-grant is allocated from the following Fiscal Year 2007 grant programs:

- A. \$17,400.00 of this sub-grant is from the State Homeland Security Program (CFDA 97.073).
- B. \$ .00 of this sub-grant is from the Law Enforcement Terrorism Prevention Program (CFDA 97.074).
- C. \$ .00 of this sub-grant is from the Metropolitan Medical Response System Program (CFDA #97.071).
- D. \$ .00 of this sub-grant is from the Urban Areas Security Initiative Grant Program (CFDA #97.008).
- E. \$ .00 of this sub-grant is from the Citizen Corps Program (CFDA #97.053).

The sub-grant funds shall be used exclusively in accordance with the provisions contained in this Agreement.

**3. Term of Agreement**

This Agreement shall commence on the date it has been signed by all signatories ("effective date"). The term of this Agreement shall end three (3) years after the effective date.

**4. Payment of Sub-grant Funds**

The payment of this sub-grant by the State to the Sub-grantee shall be made in accordance with and subject to the following schedule and conditions:

- A. This Agreement must have been executed by all signatories.
- B. The Sub-grantee must be in compliance with all applicable federal and State requirements for any federal or State grant programs administered by the State.
- C. The Sub-grantee must have submitted to the State records demonstrating that the Sub-grantee has entered into an obligation to expend funds as allowed by this Agreement. The following types of records will satisfy this requirement:
  - i. An invoice from the vendor.
  - ii. A receipt or other documentation demonstrating that payment has been made.

the Sub-grantee with written authorization to proceed with the exercise.

- (b) The Sub-grantee must have prepared an exercise After Action Report (AAR) and an Improvement Plan (IP) and any other required documentation for each discussion-based or operations-based exercise and must have submitted the AAR and IP to the State.
  - v. The State may, at its sole discretion, upon written request from the Sub-grantee, reimburse the Sub-grantee for some or all of the allowable costs incurred by the Sub-grantee in conducting the exercise except for personnel costs (such as overtime and backfill) prior to the Sub-grantee completing all of the requirements of item iv.(b), above.
- E. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Sub-grantee in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20.
- F. Reimbursement of any expenditure is not a final State decision about the allowability of such cost and is not a waiver of any violation by the Sub-grantee of the terms of this Agreement. If the U.S. DHS or the State determine that the Sub-grantee is or was not eligible to receive any or all of the funds for which reimbursement is or was requested, the State will notify the Sub-grantee stating the reasons for the determination.
- G. All payments are subject to the State's determination that the Sub-grantee's performance conforms to the terms and conditions of this Agreement.

#### **5. Allowable Expenditures**

- A. The sub-grant funds provided under this Agreement shall only be used for the expenditures that are contained on Exhibit A of this Agreement. The Sub-grantee may request, in writing, approval from the State to modify the expenditures itemized on Exhibit A. This request shall be submitted in the form and manner specified by the State. At its sole discretion, the State may, in writing, approve this request. The Sub-grantee must obtain this written approval from the State PRIOR to making an expenditure that is not in compliance with the expenditures on Exhibit A.
- B. In addition to all other applicable requirements, the Sub-grantee must comply with all applicable requirements in the U.S. Department of Homeland Security guidance document titled "FY 2007 Homeland Security Grant Program: Program Guidance and Application Kit." A copy of this guidance document is available from the following US DHS website: [http://www.ojp.usdoj.gov/odp/grants\\_programs.htm](http://www.ojp.usdoj.gov/odp/grants_programs.htm). The use of grant funding must support the goals and objectives included in the State and/or Urban Area Homeland Security Strategies.
- C. Sub-grant funds shall not be used to pay for:
  - i. expenditures otherwise budgeted for with state or local funds; or
  - ii. equipment procured or work performed prior to the effective date of this Agreement.

#### **6. Sub-grantee's Duties and Responsibilities:**

- A. The Sub-grantee shall be solely responsible for the proper implementation of the approved Project. Although not expressly attached to this Agreement, the Sub-grantee agrees to

Sub-grantee's digital geographic information system (GIS) data and digital orthophotography (air photos) data, including the name(s) and associated contact information (address, phone, e-mail). If the State so requests, the Sub-grantee will share with the State, at no cost to the State, the Sub-grantee's digital GIS data and digital orthophotography data with the State for emergency planning and response purposes. The data should be provided to the State in an ESRI compatible format, or a format in which both graphics and attribute data can be converted into an ESRI platform. Data should be accompanied by a description of the data set; preferably by Indiana Profile Metadata or FGDC metadata, or minimally by the following specific information:

- i. Title of the data set
  - ii. Description of the projection and coordinate system used
  - iii. Brief description of the data sets and their attributes (description of the fields in the database)
  - iv. Description of the accuracy of the data set, if known
  - v. Maintenance and update frequency.
- Q. The Sub-grantee shall comply with the requirements set forth in the current edition of the U.S. Department of Homeland Security Office of Grant Operations Financial Management Guide. A copy of this Guide is available from: <http://www.dhs.gov/xopnbiz/grants/>.
- R. The Sub-grantee shall comply with the following U.S. Office of Management and Budget (OMB) circulars available from <http://www.whitehouse.gov/omb/circulars/index.html>:
- i. the organization audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; and
  - ii. the standards put forth in OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments.
- S. Conflicts of Interest: Violations of the conflict of interest standards may result in criminal, civil, or administrative penalties. To avoid conflicts of interest, personnel and other officials connected with the funds provided under this Agreement shall adhere to the following requirements:
- i. No official or employee of a unit of local government or a non-governmental recipient/subrecipient shall participate personally through decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, award, cooperative agreement, claim, controversy, or other particular matter in which award funds (including program income or other funds generated by Federally funded activities) are used, where to his/her knowledge, he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest, or has less than an arms-length transaction.
  - ii. In the use of the funds provided under this Agreement, officials or employees of local units of government and non-governmental recipient/subrecipients shall avoid any action that might result in, or create the appearance of: Using his or her official position for private gain; Giving preferential treatment to any person; Losing complete independence or impartiality; Making an official decision outside official channels; or

Affecting adversely the confidence of the public in the integrity of the government or the program. For example, where a recipient of federal funds makes sub-awards under any competitive process and an actual conflict or an appearance of a conflict of interest exists, the person for whom the actual or apparent conflict of interest exists should recuse himself or herself not only from reviewing the application for which the conflict exists, but also from the evaluation of all competing applications.

- T. The Sub-grantee will ensure that funds provided under this Agreement to establish or enhance state or local fusion centers will support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines and the achievement of a baseline level of capability as defined by the Fusion Capability Planning Tool.
- U. The Sub-grantee 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 of the State and the U.S. Department of Homeland Security, Office of Grants and Training.
- V. The 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. The 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. The 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 State, FEMA and the appropriate State Historic Preservation Office.
- W. When implementing activities funded under this Agreement, the Sub-grantee shall comply with all federal civil rights laws, to include Title VI of the Civil Rights Act, as amended. The Sub-grantee is required to take reasonable steps to ensure persons of limited English proficiency have meaningful access to language assistance services regarding the development of proposals and budgets and conducting activities funded under this Agreement. For additional information see: <http://www.lep.gov>.
- X. In accordance with the federal Fiscal Year 2007 U.S. Department of Homeland Security Appropriations Act, the Sub-grantee must comply with the following two requirements:
  - i. None of the funds provided under this Agreement 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 USC 8251 et seq), or subtitle A of title I of the Energy Policy Act of 2005 (including the amendments made thereby).
  - ii. None of the funds provided under this Agreement shall be used in contravention of

section 303 of the Energy Policy Act of 1992 (42 USC 13212).

- Y. Sub-grantee acknowledges that the U.S. Department of Homeland Security reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes and that the State reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for State government purposes: (1) the copyright in any work developed in whole or part with funds provided under this Agreement; and (2) any rights of copyright to which are purchased in whole or part with funds provided under this Agreement. The Sub-grantee agrees to consult with the U.S. Department of Homeland Security and the State regarding the allocation of any patent rights that arise from, or are purchased with, this funding.
- Z. The Sub-grantee agrees to comply with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to the provision of any information required for assessment or evaluation of any activities within this Agreement.
- AA. The Sub-grantee is prohibited from transferring funds between programs (State Homeland Security Program, Law Enforcement Terrorism Prevention Program, Urban Areas Security Initiative Grant Program, Metropolitan Medical Response System Program and Citizen Corps Program).
- BB. Failure to expend funds in accordance with this Agreement may be considered a material breach of the Agreement and shall entitle the State to impose sanctions against the Sub-grantee including, but not limited to, suspension of all grant payments, and/or suspension of the Sub-grantee's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction. Sanctions may also include repayment of all funds provided under this Agreement which have been expended for activities which are not in the scope of this project as set forth in this Agreement.

## **7. Equipment Purchased**

For all tangible, nonexpendable, personal property having a per unit cost of more than \$500 acquired in whole or in part with funds provided under this Agreement, the Sub-grantee must comply with the following requirements:

- A. Maintain records that include the following:
  - i. A description of the property;
  - ii. Manufacturer's serial number or other identification number;
  - iii. Source of the property;
  - iv. Identification of the title holder;
  - v. Acquisition date;
  - vi. Cost of the property;
  - vii. Percentage of Federal participation in the cost of the property;
  - viii. Location of the property;
  - ix. If the property was assigned to an individual, the name and title of the individual to which the property was assigned;
  - x. Use of the property;
  - xi. Condition of the property; and
  - xii. The ultimate disposition of the property, including the date of disposal and sale price.

- B. A control system shall be developed and implemented to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated and fully documented and made a part of the official project records.
- C. Adequate maintenance procedures shall be developed and implemented to keep the property in good condition.
- D. The Sub-grantee shall take a physical inventory of the property and the result reconciled with the property records at least once every two (2) years. Any differences between quantities determined by the physical inspection and those in the accounting records shall be investigated to determine the cause of the difference. The Sub-grantee shall, in connection with the inventory, verify the existence, current utilization, current location, and continued need for the property.
- E. For all property having an acquisition cost of over \$5,000, acquired in whole or in part with funds provided under this Agreement, the Sub-grantee must also comply with the applicable federal requirements pertaining to equipment in 28 CFR 66.32.
- F. The Sub-grantee shall not dispose of any property acquired in whole or in part with funds provided under this Agreement, except in accordance with 28 CFR 66.32(e), if applicable, and any applicable state and local laws, rules and regulations.
- G. The Sub-grantee shall make the property and any required support personnel available to the State if requested as part of a state incident response. This may include single resource, strike team or District Response Task Force deployments. Any reimbursement of deployment costs incurred under this Clause G, shall be in accordance with other agreements between the State and participating District Response Task Force agencies.
- H. The Sub-grantee shall make the property available to other units of government within the same Homeland Security District for use as a District asset during incident response, exercise, or training activities jurisdictions. Any reimbursement of deployment costs incurred under this Clause H, shall be in accordance with local, state and district mutual aid agreements or equipment-specific use agreements.
- I. If the Sub-grantee transfers possession and/or ownership of the property or transfers funds to be used for the purchase of property provided to the Sub-grantee under this Agreement to another unit of government; the Sub-grantee shall, within 90 days of the date that the funds or property are transferred, enter into a local-local agreement or agreements with that unit of government with respect to the property. At a minimum this local-local agreement shall:
  - i. require the receiving unit of government to comply with all of the requirements of this provision (Paragraph 7 of this Agreement (Equipment Purchased)).
  - ii. address each participant's responsibilities with respect to maintenance, repair, activation issues, deployment issues, reimbursement, and liability in regards to the property.
- J. If the Sub-grantee fails to comply with any part of this provision (Paragraph 7 of this Agreement (Equipment Purchased)); the Sub-grantee may be required to repay to the State some or all of the funds provided to the Sub-grantee under this Agreement for the purchase of the property. In addition, such a failure to comply may jeopardize the Sub-grantee's ability to obtain future grants from the State.
- K. These requirements are on-going and survive the expiration or termination of this Agreement and will remain in effect until the property is disposed of in accordance with this Agreement and applicable federal regulations.

## **8. Procurement and Contracts**

In addition to local, state and other applicable federal requirements pertaining to procurement and contracting, the Sub-grantee shall comply with the applicable federal requirements pertaining to procurement and contracting contained in 28 CFR 66.36.

The Sub-grantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to the State.

All procurement transactions (including service contracts), whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements (including service contracts), in excess of \$100,000 must receive prior written approval of the State. Justification must be provided for non-competitive procurement and should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

## **9. Notice to Parties**

Whenever any notice, statement or other communication is sent to the State or Sub-grantee it must be sent to the following addresses, unless otherwise specifically advised in writing.

A. Notices to the State must be sent to:

Grants Management Director  
Division of Planning  
Indiana Department of Homeland Security  
302 West Washington Street, Room E220  
Indianapolis, Indiana 46204

B. Notices to the Sub-grantee shall be sent to the individual and address designated under Sub-grantee Contact Information in Exhibit A of the Agreement.

## **10. Monitoring By the State**

The State may conduct a monitoring review and evaluation of activities as deemed appropriate by the State. The Sub-grantee will effectively ensure the cooperation of the Sub-grantee's employees in such monitoring and evaluation efforts. The Sub-grantee will take all actions necessary to correct or cure any findings identified by the State during its monitoring and evaluation.

## **11. Recordkeeping and Access to Records**

A. The Sub-grantee shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Agreement. When records are stored away from the Sub-grantee's principal office, a written index of the location of records stored should be on hand and ready access should be assured. Records of different federal fiscal periods shall be separately identified and maintained so that information desired can be readily located. The Sub-grantee shall adequately protect records against fire or other damage. The Sub-grantee shall maintain these books, documents, papers, accounting records and other evidence pertaining



to this project for a period of at least three (3) years, beginning on the latest of the following:

- i. The date that the Sub-grantee submits its last report, deliverable or invoice to the State.
- ii. The termination date of this Agreement.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration date of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular three-year period, whichever is later.

- B. The Sub-grantee must permit any authorized representative of the State (including an authorized representative of the State Board of Accounts), the U.S. Department of Homeland Security, or the United States Comptroller General to inspect all work, materials, payrolls, and other data and records that pertain to this Agreement or any projects being funded under this Agreement, and to audit the books, records, and accounts of the Sub-grantee and its sub-grantees and contractors that pertain to the Agreement or any projects being funded under this Agreement. Copies thereof shall be furnished at no cost to the State or United States government representatives if requested. Closeout of this project will not alter the Sub-grantee's audit responsibilities.

## **12. Close-Out Audit**

Following the date on which all sub-grant funds provided pursuant to this Agreement are expended, upon termination of this Agreement, or upon expiration of this Agreement, whichever is earliest, Sub-grantee shall arrange for a financial and compliance audit of funds provided by State pursuant to this Agreement in accordance with the following:

- A. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the State Board of Accounts), and performed in accordance with the following:
  - i. The Indiana State Board of Accounts publication entitled "Guidelines for Financial Examination of Entities Receiving Assistance from Governmental Sources,"; and
  - ii. Applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).
- B. Sub-grantee is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Agreement.
- C. Audits conducted pursuant to this paragraph shall be submitted no later than nine (9) months following the close of the Sub-grantee's fiscal year.
- D. Sub-grantee agrees to provide to the Indiana State Board of Accounts and the State an original of all financial and compliance audits.
- E. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Sub-grantee, and not of a parent, member, or subsidiary corporation of the Sub-grantee, except to the extent such an expanded audit may be determined by the Auditor or the State to be in the best interests of the State.
- F. The audit shall include a statement from the Auditor that the Auditor has reviewed this Agreement and that the Sub-grantee is not out of compliance with the financial aspects of this Agreement.

## **13. Termination of Agreement**

- A. This Agreement may be suspended or terminated, in whole or in part, by the State whenever,

for any reason, the State determines that such suspension or termination is in the best interest of the State. Suspension or termination shall be effected by delivery to the Sub-grantee of a Suspension or Termination Notice, specifying the extent to which such suspension or termination becomes effective.

- B. Costs resulting from obligations incurred by the Sub-grantee during a suspension or after termination of this Agreement are not allowable unless the State expressly authorizes them in the notice of suspension or termination. Other costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
- i. The costs result from obligations which were properly incurred before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are not cancelable, and,
  - ii. The costs would be allowable if the Agreement were not suspended or expired normally at the end of the funding period in which the suspension or termination takes place.

#### **14. Funding Cancellation**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, the Agreement shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

#### **15. Compliance with Laws**

- A. The Sub-grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the State and the Sub-grantee to determine whether the provisions of this Agreement require formal modification.
- B. The Sub-grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Sub-grantee is not familiar with these ethical requirements, the Sub-grantee should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Sub-grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the Sub-grantee. In addition, the Sub-grantee may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- C. The Sub-grantee certifies by entering into this Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Sub-grantee agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Sub-grantee. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Sub-grantee is current in its payments and has submitted proof of such payment to the State of Indiana.
- D. The Sub-grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana, and agrees that it will immediately

notify the State of any such actions. During the term of such actions, the Sub-grantee agrees that the State may delay, withhold, or deny work under this Agreement and any supplement, amendment, change order or other contractual device issued pursuant to this Agreement.

- E. If a valid dispute exists as to the Sub-grantee's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Sub-grantee, the Sub-grantee may request that it be allowed to continue, or receive work, without delay. The Sub-grantee must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.
- F. The Sub-grantee warrants that the Sub-grantee and its contractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work with the State of Indiana.
- G. The Sub-grantee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
  - (1) The Sub-grantee and any principals of the Sub-grantee certify that (A) the Sub-grantee, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Sub-grantee will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.
  - (2) The Sub-grantee and any principals of the Sub-grantee certify that an affiliate or principal of the Sub-grantee and any agent acting on behalf of the Sub-grantee or on behalf of an affiliate or principal of the Sub-grantee (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.
- I. **Accessibility Standards:** Any information technology related products or services purchased used or maintained through this Agreement must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at the following website: <http://www.access-board.gov/508.htm>.

#### **16. Penalties/Interest/Attorney's Fees**

The State will, in good faith, perform its required obligations under this Agreement and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8-5, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

#### **17. Severability**

The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

#### **18. Survival**

Any expiration or termination of this Agreement shall not affect the ongoing provisions of this Agreement that will survive the expiration or termination in accordance with their terms.

#### **19. Remedies Not Impaired**

No delay or omission of the State in exercising any right or remedy available under this Agreement impairs any such right or remedy or constitutes a waiver of any default or any acquiescence thereto.

#### **20. Waiver of Rights**

No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless the waiver is in writing and signed by the party claimed to have waived such right.

#### **21. Drug-Free Workplace Certification**

The Sub-grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Sub-grantee will give written notice to the State within ten (10) days after receiving actual notice that the Sub-grantee or an employee of the Sub-grantee in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Agreement amount set forth in this Agreement is in excess of \$25,000.00, the Sub-grantee hereby further agrees that this Agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Sub-grantee and made a part of the contract or agreement as part of the contract documents.

The Sub-grantee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Sub-grantee's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Sub-grantee's policy of maintaining a drug-free

workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Sub-grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

## **22. Nondiscrimination**

- A. This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Agreement, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Sub-grantee or any sub-grantee or contactor or subcontractor.
- B. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Sub-grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, the Sub-grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.
- C. The Sub-grantee understands that the State is a recipient of federal funds, and therefore, where applicable, the Sub-grantee and any subgrantees, contractors and subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

## **23. Lobbying Certification**

- A. As required by Section 1352, Title 31 of the U.S. Code and implemented at 28 CFR 69, for

persons entering into an Agreement over \$100,000, as defined at 28 CFR 69, the Sub-grantee certifies that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-grantee, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Sub-grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (see 28 CFR Part 69, Appendix B for a copy of this form).
  - (3) The Sub-grantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **24. Debarment and Suspension**

- A. State Debarment and Suspension Requirements.
- i. The Sub-grantee certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Sub-grantee.
  - ii. The Sub-grantee certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Sub-grantee shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Agreement.
- B. Federal Debarment and Suspension Requirements

- i. Prior to signing this Agreement, the Sub-grantee must notify the State if the Sub-grantee knows that the Sub-grantee or any of the principals of the Sub-grantee are presently excluded or disqualified from participation in this transaction by any Federal department or agency.
- ii. Sub-grantee shall not make any award or permit any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs by any Federal department or agency.
- iii. The Sub-grantee shall provide immediate written notice to the State if at any time the Sub-grantee learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- iv. The Sub-grantee shall comply with 28 CFR Part 67, Subpart C (28 CFR 67.300-67.365).

**25. U.S. Department of Homeland Security-Office of Grants and Training Assurances**

The Sub-grantee acknowledges that federal funds are the source of payments under this Agreement and hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars No. A-21, A-87, A-102, A-110, A-122, A-133; E.O. 12372 (intergovernmental review of federal programs); and 28 CFR Parts 66 or 70 (administrative requirements for grants and cooperative agreements). The Sub-grantee also specifically assures and certifies that:

1. It has the legal authority to apply for and receive federal assistance and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project described in its Application and this Agreement.
2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
3. It will give the U.S. Department of Homeland Security or the Comptroller General, through any authorized representative, access to and the right to examine all paper and electronic records related to the financial assistance.
4. It will comply with all lawful requirements imposed by the U.S. Department of Homeland Security, specifically including any applicable regulations, such as 28 CFR parts 18, 22, 23, 30, 35, 38, 42, 61, and 63.
5. It will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. It will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention,

- Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. It will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
  8. It will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
  9. It will comply, as applicable, with the provisions of the Davis- Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333), regarding labor standards for federally-assisted construction subagreements.
  10. It will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
  11. It will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).
  12. It will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
  13. It will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic



Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. It will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. It will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. It will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. It will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

#### **26. Governing Laws.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

#### **27. Authority to Bind Sub-grantee**

- A. Notwithstanding anything in this Agreement to the contrary, the signatory(ies) for the Sub-grantee represents that execution of this Agreement has been duly authorized by all necessary action required under Indiana law.
- B. The Sub-grantee shall not assign, sublet or transfer interest in this Agreement without the prior written consent of the State.

#### **28. Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that he/she is the Sub-grantee, or that he/she is the representative, agent, member or officer of the Sub-grantee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Sub-grantee, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

**THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.**

In Witness Whereof, the Sub-grantee and the State have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement do, by their respective signatures dated below, hereby agree to the terms thereof.

**Sub-grantee: Board of Commissioners of Delaware County**

By: [Signature]  
Printed Name: Tom Donnan  
Title: County Commissioner  
Date: 6-1-09

By: [Signature]  
Printed Name: Larry Bledsoe  
Title: County Commissioner  
Date: 6/1/2009

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

[If this Agreement is with a County, the Agreement must be signed by at least 2 of the 3 county commissioners]

**Certification by Sub-grantee Financial Officer:**

**Certification by Sub-grantee Project Director:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Department of Homeland Security:**

**Indiana Office of Technology:**

\_\_\_\_\_  
Joseph E. Wainscott, Jr.  
Executive Director  
Date: \_\_\_\_\_

\_\_\_\_\_  
Gerry Weaver  
Chief Information Officer  
Date: \_\_\_\_\_

**Department of Administration:**

**State Budget Agency:**

\_\_\_\_\_  
Mark W. Everson  
Commissioner  
Date: \_\_\_\_\_

\_\_\_\_\_  
Christopher A. Ruhl  
Director  
Date: \_\_\_\_\_

*Form approval has been granted by the Office of the Attorney General pursuant to IC 4-13-2-14.3(e) on July 29, 2008. FA 08-55*

Form Prepared By: Brad S. Gavin, Legal Counsel, Indiana Department of Homeland Security

\_\_\_\_\_  
Initials of agency legal counsel reviewer

## Exhibit A



**Indiana Department of Homeland Security (IDHS)**  
**Delaware**  
**Budget Id: 809**

### Contact

**name:** Jeff Evans  
**title:** Asst. Dir.  
**address:** 100 West Washington St  
Muncie, IN 47305  
**county:**  
**phone:** 765.747.4888  
**fax:**  
**email:** jevans@co.delaware.in.us

### Allocated Fund

2007 SHSP > LOCAL > Five on Five-2007 DTL

**project manager:** Rick Archer  
**proposal:** State Wide Exercise Program

## Budget Items

Budget Total Amount: \$17,400.00

solution area: EXERCISE

		unit	price/rate	hours	amount
<b>description:</b>	Contractor/Consultants	1.0	\$6,090.00	1.0	\$6,090.00
<b>category</b>	Contractors/Consultants/Instructors				
<b>discipline</b>	Emergency Management				
<b>narrative</b>	Example Expenses: Contract/Consultant Costs				
<b>approved equipment #</b>	___				
<b>description:</b>	Exercise Conduct, Evaluation, Materials/Supplies	-	\$3,132.00	-	\$3,132.00
<b>category</b>	Materials and Supplies Used and/or Expended				
<b>discipline</b>	Emergency Management				
<b>narrative</b>	Example Expenses: Printing, ID Badges, Travel, PPE, Simunition, working lunches/refreshments, presentation binders, etc.				
<b>approved equipment #</b>	___				
<b>description:</b>	Personnel Costs	1.0	\$4,698.00	1.0	\$4,698.00
<b>category</b>	Full or Part-time Staff				
<b>discipline</b>	Emergency Management				
<b>narrative</b>	Example Expenses: Overtime, Backfill, Volunteer Stipend, etc.				
<b>approved equipment #</b>	___				
<b>description:</b>	Planning Cost	-	\$3,480.00	-	\$3,480.00
<b>category</b>	Planning and/or Exercise Plan Development				
<b>discipline</b>	Emergency Management				
<b>narrative</b>	Example Expenses: printing, paper, ink, facility rental, travel, etc.				

approved _____	
equipment #	
	<b>EXERCISE TOTAL: \$17,400.00</b>