

American Recovery and Reinvestment Act  
PORT SECURITY GRANT PROGRAM (ARRA PSG) 2009  
(Award Number 2009-PU-R1-0189)

SUB-GRANTEE AWARD AGREEMENT

Between  
PORT OF OAKLAND  
(Grantee Number 941746312)  
As Grantee

And

CITY OF OAKLAND  
SUB-GRANTEE

This Agreement, between the Port of Oakland, Grantee of the Department of Homeland Security (DHS) Federal Management Agency (FEMA) (hereinafter referred to as Port of Oakland, or Port or Grantee), and the City of Oakland (hereinafter referred to as City of Oakland or City or Domain Awareness (DAC) Sub-Grantee or Sub-Grantee) is effective from this 1<sup>st</sup> day of January, 2011 until August 31, 2014. The Sub-Grantee understands and agrees that this grant award shall be subject to and incorporate the following terms and conditions. The Sub-Grantee shall include provisions appropriate to effectuate the purposes of these conditions in all contracts of employment, consultant's Agreements, and contracts issued under its approved application.

**I. Authority and Purpose**

- A. This Agreement is undertaken as part of the DHS Infrastructure Protection Activities (IPA) under the auspices of the American Recovery and Reinvestment Act (ARRA) Port Security Grant Program 2009. The ARRA is an economic stimulus package enacted by the 111<sup>th</sup> Congress in February 2009. The ARRA Port Security Grant Program (PSGP) is an important component of a coordinated, national effort to strengthen the security of America's critical infrastructure. This federal preparedness assistance award to the Port of Oakland was given by the Department of Homeland Security Federal Emergency Management Agency (hereinafter FEMA) under the Port Security Grant Program 2009.
- B. **Amount, Dates and Purpose of Award:** This Agreement establishes the terms, conditions, assurances and certifications under which the Port of Oakland as primary grantee shall award to Sub-Grantee an allocation of funds from the Port Security Grant Program (hereinafter PSGP), Award Number 2009-PU-R1-0189, in the amount of \$2,921,700 in accordance with the Investment Justification and Budget (Exhibit A) approved by the Port of Oakland Grantee Board of Commissioners Resolution No. 10-13 on March 3, 2010 and the accompanying Port Agenda Report dated February 18, 2010 (Exhibit B) and FEMA Acceptance letter dated September 29, 2009 (Exhibit C), which are attached hereto and made a part of this Agreement. The award date is September 29, 2009. The project period is from September 1, 2009 to August 31, 2012 with the possibility of extension to August 31, 2014. The purpose of the award is to upgrade the existing Emergency Operations Center (EOC) to act dually as a Domain Awareness Center (DAC) as outlined in Oakland City Council Resolution No. 82933 C.M.S. filed by the City Clerk June 30, 2010 and in the accompanying City Council Report dated July 13, 2010 attached (Exhibit D). The DAC would provide an operational as well as technical framework to consolidate a network of existing and future surveillance and security sensor data sources to actively monitor critical Port facilities, utility infrastructure, City facilities, crime hotspots and roadways. Information integration and management framework software would be utilized together with video analytics to efficiently screen and monitor the data as well as coordinate incident

management. The information management software would include situation awareness and response capabilities, linking monitoring data with dispatch and automated access control at some facilities. So as to strengthen the safety and security of the Port of Oakland and the City of Oakland, this project will be a collaborative effort between the Port of Oakland and City of Oakland, including the Oakland Fire Department (OFD), Oakland Office of Emergency Services (OES), Oakland Police Department (OPD) and Oakland's Department of Information Technology (DIT). The Office of Emergency Services will be the lead agency in the City of Oakland for overall coordination and making sure to meet grant goals and guidelines. The Port of Oakland and the City of Oakland agreed to address risk mitigation and preparedness needs in the signed, attached Port of Oakland and City of Oakland Domain Awareness Response Coordination Work Group Memorandum of Agreement dated June 25-26 2009 (Exhibit F). This project is dependent on a Phase One Engineering Concept Design by the Port of Oakland. This grant proposal was offered to the Port via letter from the Marine Exchange to Port of Oakland on February 9, 2011 in the amount of \$438,750 for Port Security Grant Round Eight Award #2008-GB-T8-K063 (See Exhibit J.). The delay in the funding for the concept of design may require an extension of the DAC project.

### **C. Roles and Responsibilities**

1. **Oakland Fire Department, Office of Emergency Services (OES)** will be the lead agency for the City for the project and coordinate this effort through planning, organizing, securing and managing resources. The OES Director or her designee shall be the project manager. OES will forward fiscal and project updates to inform Oakland Fire Department (OFD) and Port Fiscal Staff for processing. OES will develop a more detailed scope of work after the Design Component of the DAC project is complete. This project is dependent on a Phase One Engineering Concept Design by the Port of Oakland. This grant proposal that was offered via letter from the Marine Exchange to Port of Oakland on February 9, 2011 in the amount of \$438,750 for Port Security Grant Round Eight Award #2008-GB-T8-K063 (See Exhibit J.), and subsequently accepted by Port of Oakland letter dated April 25, 2011. That Phase 1 project will establish Concept of Operations and lay the framework for the performance requirements for the ARRA 2009 funded DAC. As a co-party, City representatives from Oakland Police Department (OPD), Oakland Fire Department (OFD), Office of Emergency Services (OES), and Department of Information Technology (DIT) will be involved in the review, provide feedback, and acceptance of major milestones associated with this Phase 1 project and will provide final acceptance of deliverable. In the future, OES will also develop the program management for the ongoing staffing and operation of the DAC, with the input and participation of the key stakeholders including the Port of Oakland, OPD, OFD, OES, and DIT. In consideration for the provision of services described in this MOU, the Grantee (Port) shall reimburse the Sub-Grantee (City) based on the terms and condition of the MOU and the future Scope of Work. The Sub-Grantee (City) shall make every effort to invoice the Grantee (Port) on a monthly basis.
2. **City of Oakland Fiscal Services:** The City shall assign staff to be responsible for including specific language for accepting or applying for ARRA 2009 funding, adding personnel, sending copies of cash draw downs and/or reimbursements to the Fiscal Management Accounting Division. Reference shall be made to guidelines in City Administrator Memo 1/23/11 (Exhibit G) City agrees to record all project costs, following generally accepted accounting principles (GAAP). A separate account number or cost recording system must separate all project costs from the Sub-Grantee's other or general expenditures. The City is required to maintain all adequate documentation for all project costs, which include, but are not limited to, request for proposals/qualifications, bids and price quotations for goods, materials, equipment or labor, proposal or qualifications for professional, technical or scientific services, vendor records, purchase orders, contracts, product/service specifications, documentation of fixed assets, invoices and payment applications for good, materials, equipment and labor procured or purchased, personnel documents pertaining to the grant funded hiring and separation and appropriate written approvals for

financial and payroll transactions. City will forward invoices to the Port in a timely manner, usually the 15<sup>th</sup> of each month.

3. **Port of Oakland:** Port of Oakland shall submit the required reports to the Federal Government including a.) 1512 Report Federal Reporting.gov b.) Federal Financial Report (FFR, SF 425), quarterly report, semi-annual performance report and close-out report within the timeline set forth by the Grantor, and the Categorical Assistance Progress Report (CAPR) based on information relayed to it by OES, OFD and DIT. In consideration for the provision of services described in this MOU, the Grantee (Port) shall reimburse the Sub-Grantee (City) based on the terms and conditions of the MOU and the future Scope of Work. The Grantee (Port) will make every effort to issue reimbursement to the Sub-Grantee (City) within 15 calendar days of being reimbursed by FEMA, for allowable costs approved by FEMA. If items claimed are in question, only the amount in question is withheld until supporting documentations are provided. Both the Grantee and Sub-grantee should make every effort to resolve the amount in question within a reasonable and timely manner, not to exceed one month or such time as is otherwise mutually agreed upon by both parties.

- a. **The invoice from the sub-grantee to the grantee will be sent to:**

Port of Oakland

Port Security

530 Water Street Oakland 94607

Attention to: Port Security Officer Mike O'Brien

- b. **The payment from the grantee to sub-grantee shall be made payable to:**

City of Oakland

Office of Emergency Services

1605 Martin Luther King Way Oakland 94618

Attention to: OES Director Renee Domingo

4. **City Information Technology:** City will coordinate the vendor presentations, pre-bid conferences, the advertising, bidding and Requests for Proposals/Qualifications (RFP/Qs) processes, execution of purchases orders and contracts, inspect and accept work and products and approve invoices from a technical stand point and forward to OES for processing to the Port of Oakland. City will oversee the technical solution implementation for the DAC. In the RFP/Q process, City will develop a checklist with a matrix of what each vendor has to offer, work with the vendor to develop acceptance test plans, technical scope, delivery milestones, and program timelines. During the build-out implementation of the project, City will give regular monthly progress reports, if requested, to the Port.
5. **City Police Services:** City will participate in the DAC Steering Committee with Port to pursue funding from grants and other sources and to staff the DAC. Dependent on City's police staffing levels, the City will assign staff to the DAC if it determines in its sole discretion that such assignment would enhance the City's ability to deliver on its mission for crime prevention and risk mitigation for the Port of Oakland and the City of Oakland.

**Audit: Port and City Fiscal:** By the OMB Circular A-133 standard and Single Audit Act of 1996, when more than \$500,000 is spent, a grant will be subject to the "major grant" audit, which will include in the

Single Audit. This is the so called "organization-wide financial and compliance audit report. Generally, the Single Audit is finalized on February each year that is 8-9 months after the year-end closes. If the Sub-grantee (City) expends \$500,000 or more of Federal funds derived from any federal source during its fiscal year, the sub-recipient must submit an organization-wide financial and compliance audit report. The ARRA 2009 Award special conditions on page 2-section 1), (Exhibit C) states: "The Grantee and sub-grantee shall comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit Requirements. A non-exclusive list of regulations commonly applicable to DHS grants are described in: *Audit Requirements: 1. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations*"

**D. Scope of Work:** This DAC project is dependent on a Phase One Engineering Concept Design. A scope of work for the Domain Awareness Center will be agreed upon by Grantee (Port) and Sub-Grantee (City) and will be developed after the 2008 DAC Concept Design is complete. The Concept of Design funds were offered to the Port on February 9, 2011 and subsequently accepted by Port of Oakland letter dated April 25, 2011. At the time of the signing of this memorandum of understanding, the Port is proceeding with the preparation for Request for Proposal for the Concept of Design. The Design Phase 1 project will establish Concept of Operations and lay the framework for the performance requirements for the ARRA funded DAC.

## **II. Applicable Rules/Regulations**

- A. Applicability of Federal Regulations and Conditions:** The Sub-Grantee shall comply with all federal statutes, regulations and guidance applicable to administration of federal grants and cooperative Agreements including but not limited to 2 C.F.R. subtitle A, 44 C.F.R. Part 13 and Office of Management and Budget (OMB) Circulars, as applicable: A-21 Cost Principles for Educational Institutions; A-87 Cost Principles for State, Local and Indian Tribal Governments; A-122 Cost Principles for Non-Profit Organizations; A-102 Uniform Administrative Requirements for Grants and Agreements with State and Local Governments; A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and 48 C.F.R. Part 31 et. seq. Contract Cost Principles and Procedures. The Sub-Grantee shall assure that these conditions apply to all recipients of assistance or funds – including as applicable all sub-contract vendors, consultants, contractors and suppliers. Copies of these OMB Circulars are available for download on the OMB website at [www.whitehouse.gov/OMB/grants/index.html](http://www.whitehouse.gov/OMB/grants/index.html). All of the terms and conditions of Award Number 2009-PU-R1-0189 are incorporated herein by reference and are made applicable to all Sub-Grantees as well as any sub-contracts entered into by Sub-Grantee under this Agreement. (See Exhibit C Award letter including special conditions).
- B. Federal Standard Assurances and Additional Assurances and Certifications:** The Sub-Grantee agrees to be bound by and/or comply with the Federal Standard Assurances and Certifications, including SF 424 B (Assurances - Non-Construction Programs) and SF424 D (Assurances- Construction Projects), Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements; and Accounting System and Financial Capability Questionnaire. Written copies of these assurances must be signed in conjunction with and will form a part of this Agreement.
- C. Non-Supplanting Stipulation:** Except as provided for by federal law or regulation to satisfy funding or in kind match requirements, the Sub-Grantee shall not use grant funds to supplant state or local funds or other resources that would otherwise have been made available for this project. Further, if a position created by a grant is filled from within, the vacancy created by this action must be filled within 60 days. If the vacancy is not filled within 60 days, the Sub-Grantee must stop charging the grant for the new position. Upon filling the vacancy, the Sub-Grantee may resume charging for the grant position and must supply the name of the replacement person to the Grantee.

- D. Environmental and Historic Preservation Requirements:** Sub-Grantee shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws, including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Sub-Grantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. Sub-Grantee shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA including, but not limited to communications towers, physical security enhancements, new construction and modifications to buildings that are 50 years old or greater. Sub-Grantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground-disturbing activities occur during project implementation, the Sub-Grantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Sub-Grantee will immediately cease construction in that area and notify the Port and the appropriate State Historic Preservation Office.
- E. Audit:** The Sub-Grantee agrees to comply with the requirements of OMB Circulars A-133 for States, Local Governments, and Non-Profits or Government Auditing Standards, 1994 Revision for Commercial/For-Profit Organizations as applicable. If the Sub-grantee expends \$500,000 or more of Federal funds derived from any federal source during its fiscal year, the sub-recipient must submit an organization-wide financial and compliance audit report. In addition, the Sub-Grantee agrees to submit a copy of the project's annual audit (required) to the Port within 180 days of the end of fiscal year end. The Port of Oakland in its capacity as Grantee reserves the right to request any and all information and documentation pertaining to project execution including the right to on-site inspection and verification of records and work performed.
- F. Report Requirements:** The Sub-Grantee (City) agrees to submit, at such times and in such form as may be prescribed, reports as the Port Agent may reasonably require, such as quarterly financial reports not later than the 15th day of January, April, July and October and the Semi-Annual progress reports by the 15th of January and July during each year this Agreement is effective, as well as final financial reports and evaluation reports. The Grantee (Port) will then submit the required reports including: 15-12 Federalreporting.gov report, the Financial Report (FFR, SF 425) and the Categorical Assistance Report (CAPR). These reporting dates will line up with the ARRA and PSGP reporting requirements. The final progress report must be filed with the Grantee (Port) within thirty (30) days after project completion or the termination of the last year of the sub-grant award, whichever occurs first. The Grantee (Port) must receive, verify, and approve the final progress report prior to the final cost report and invoice being paid. The Grantee (Port) and Sub-grantee (City) agree to be bound by and/or comply with the ARRA 2009 Reporting Requirements: ARRA 2009 Grant Award Special Conditions as outlined in the Grant Award Number 2009-PU-R1-0189 (Exhibit C) and as detailed in the FY 2009 American Recovery and Reinvestment Act (ARRA) Reference Guide for PSGP and TSGP ARRA Grantees (Exhibit I).
- G. Assignability:** The Sub-Grantee (City) shall not assign any interest in this grant Agreement and shall not transfer any interest, whether by assignment of novation, without the prior written consent of the Grantee (Port), except as specified herein.
- H. Continuation Funding:** Sub-Grantee (City) understands that the awarding of this grant in no way assures or implies continuation of funding beyond the project duration indicated in this grant award.
- I. Third Party Participation:** No contract or Agreement may be entered into by the Sub-Grantee (City) for execution of project activities or provision of services to a grant project that is not incorporated in the approved application. Any such arrangements shall provide that the Sub-Grantee will retain ultimate control and responsibility for the project and that these conditions shall bind the contractor. In

any case, where the Sub-Grantee enters into a contract with third parties, and when such contracts are not contrary to law, the Grantee (Port) shall not be obligated or liable for any breach of contract or other action in law to any party other than the original Sub-Grantee.

**J. Waiver:** It is agreed that the failure of the Grantee (Port) to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any rights assigned to Port under this Agreement.

**K. Title to Property:** Effective control and accountability must be maintained for all personal property. Sub-Grantee must adequately safeguard all such property and must assure that it is used solely for authorized grant purposes. Subject to the obligations and conditions set forth in OMB Circulars A-102 and A-110, title to Non-expendable property acquired in whole or in part with grant funds shall be vested in the Sub-Grantee (City) upon termination of the grant. Non-Expendable property is defined as any item having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Sub-Grantee should exercise caution in the use, maintenance, protection, and preservation of such property during the period of project use.

**L. Indemnity and Hold Harmless:** Sub-Grantee (City) shall indemnify, defend and hold harmless the Grantee (Port) and its officers, directors, employees and agents from and against all liability, loss, cost or expense (including attorney's fees) by reason of liability imposed upon the Grantee (Port), arising out of or related to Sub-Grantee's (City's) performance under this Agreement, whether caused by or contributed to by the Port or any other party indemnified herein, including but not limited to any misfeasance, malfeasance, negligent or intentional acts of Sub-Grantee, its officers, agents, or employees, or its subcontractors or their officers, agents, and employees unless such loss is caused solely by the malfeasance, misfeasance, or negligence of the Port, its officers, directors, employees or agents.

**M. Insurance:** During the term of this Agreement, Sub-Grantee (City) shall carry general liability, workers compensation, and automobile insurances, with minimum liability limits of \$1,000,000, and shall provide proof of such coverage upon signing of this agreement. Such proof of insurance shall be in the form of a standard Certificate of Insurance issued by an insurance broker, underwriter or company licensed to perform business in the state of California and in a form acceptable to the Grantee (Port). Prior to performing any services under this Agreement and at such times thereafter as the Grantee (Port) may reasonably request, Sub-Grantee (City) shall provide the Grantee (Port) with current certificates of insurance for all coverage required by the terms of this Agreement, naming the Grantee (Port) as an additional insured. Notwithstanding any other provisions to the contrary, the Sub-Grantees (City) insurance shall remain primary for the execution of all work covered by this Agreement. If Sub-Grantee (City) is self-insured with an established record of self-insurance, Sub-Grantee (City) may comply with the following in lieu of the insurance policies described in this insurance section M:

- (a) Sub-Grantee (City) shall provide to, the Grantee (Port), evidence of an acceptable plan to self-insure to a level of coverage equivalent to that required under this insurance section M.
- (b) If Sub-Grantee (City) ceases to self-insure to the level required hereunder, or if Sub-Grantee (City) are unable to provide continuing evidence of Sub-Grantee's (City) ability to self-insure, Sub-Grantee (City) agrees to immediately obtain the coverage required under this insurance section M.

**N. Confidentiality and Non-Disclosure:** The Sub-Grantee agrees to furnish the Port of Oakland with certain information that may be considered confidential or sensitive relating to the grant award. The Port of Oakland agrees to review, examine, inspect or obtain such confidential and/or sensitive information only for the purposes described herein, and to otherwise hold confidential and proprietary information or trade secrets in trust and confidence. Documents and records that may be described as "sensitive security information" under prevailing definitions will be managed and controlled under application of federal regulations and guidelines. The Port of Oakland agrees not to disclose any such confidential or sensitive information to any third party, except to legitimate agents of the U.S. Government or as required by state or federal disclosure laws or by judicial order.

### **III. Operational Procedures**

**A. Accounting Requirements:** The Sub-Grantee (City) agrees to record all project costs, both federal and non-reimbursable following generally accepted accounting principles (GAAP). A separate account number or cost recording system must separate all project costs from the Sub-Grantee's other or general expenditures. Adequate documentation for all project costs must be maintained. Federal share documentation must clearly indicate that the funds expended were PSGP federal funds. The Grantee (Port) and the Sub-Grantee (City of Oakland) will agree on the accounting format to be used.

**B. Payment and Utilization of Funds and Reimbursement Timelines:** Funds awarded are to be expended only for purposes and activities covered by the Investment Justification and Budget as attached hereto. (Exhibit A) Project funds (both federal and matching share) may not be expended prior to the grant award start date. Project funds will be made available through a reimbursement procedure as provided by the Grantee's (Port's) Policies and Procedures, as per Exhibit B. No payment of funds shall be made to Sub-Grantee (City) during any period of time within which Sub-Grantee is in default on filing any informational or financial reports required by the Grantee (Port). However, if items claimed are in question, only the amount in question is withheld until supporting documentations are provided. All claims for reimbursement must be accompanied by copies of all supporting documentation (i.e., time sheets, proof of payment, travel vouchers, invoices, etc.). Claims for reimbursement should be submitted as incurred and will not be authorized if greater than 6 months in arrears, unless specifically approved by the Grantee (Port). Payments will be adjusted to correct previous overpayment and disallowances or underpayments resulting from audit. **Port of Oakland and City of Oakland Reimbursement Timelines:** In consideration for the provision of services described in this MOU, PORT shall pay CITY based on the terms and conditions of the MOU and the Scope of Work. CITY shall make every effort to invoice PORT in a monthly basis on the 15<sup>th</sup> of each month. PORT will make every effort to submit reimbursement requests to FEMA and to issue reimbursement to CITY within 15 calendar days of FEMA reimbursement to the PORT. If items claimed are in question, only the amount in question is withheld until supporting documentations are provided.

**C. Grant Adjustments:** The Sub-Grantee must obtain prior written approval from the Grantee for major projects changes. These include, but are not limited to: (a) changes of substance in project activities, designs, or research plans set forth in the approved application; (b) changes in the Project Director and/or key professional personnel identified in the approved application; (c) changes in the approved budget with the exception of those changes permitted in accordance with provisions cited later in this section, and (d) changes in the length of the grant period. Some project changes, such as purchase of equipment not included in the approved budget or changes or deviations which might alter the project scope or intent may also require prior approval of the FEMA. (d.) Both the Grantee and the Sub-Grantee shall maintain budget notifications in the project file.

The Sub-Grantee may deviate from quantities of equipment items in the approved budget as long as the total dollar amount of the equipment budgeted is not exceeded. Sub-Grantee may not add to the specified equipment list without prior approval of FEMA unless the total dollar amount of the equipment budgeted is not exceeded. Sub-grantee may move funds within accounts as long as it is within compliance with the ARRA 2009 Award Acceptance letter and special conditions. To move from one account to another, the Sub-Grantee

(City) must receive written approval from the Grantee (Port). Accounts are specified in the budget: (Personnel, Fringe Benefits, Travel, Equipment, Supplies, Consultants/Contracts/Construction and Other. See Exhibit H (DAC Budget Detail Worksheet) for detailed budget. A 10% change does not require permission from the Grantee (Port), but does require notification. The total cost of the project may not exceed the total amount of the grant. The City of Oakland may move money within accounts without permission from the Port as long as the budget total is not exceeded, with the exception of the Management and Administration account, which is a fixed maximum amount based on total project cost as per the Guidance and Application Kit for the Port Security Grant Program, ARRA of 2009 dated May 2009.

- D. Procurement Standards, Procedures and Reimbursement:** The Sub-Grantee (City) shall adhere to and use the City of Oakland Policies and Procedures.
- E. Monitoring:** Sub-Grantee (City of Oakland) agrees to allow the Grantee (Port of Oakland) reasonable access to the grant project for the purposes of monitoring programmatic and field construction progress, as well as the financial and business management aspects of the grant award to ensure that project objectives are met and funds are spent and accounted for properly. Access shall include inspection of financial and program reports, site visits, teleconferences and/or such other means necessary for the Grantee (Port) to carry out its monitoring obligations. A reasonable notification

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

This Agreement will terminate upon completion of the project or on August 31, 2012, whichever occurs earlier, if no extension is granted, or on August 31, 2014 if a two year extension is granted.

- A.** This grant may be terminated or fund payments suspended by the Grantee (Port) where there is a failure to comply with the terms and conditions of:
  - 1. The grant application form and attachments;
  - 2. The grant award contract;
  - 3. Any state or federal law to which compliance is required;
  - 4. An audit report which includes audit exceptions not answered to the satisfaction of the Port or FEMA.
- B.** Upon such finding, the Grantee (Port) shall notify the Sub-Grantee (City) in writing to correct any deficiencies found. If said deficiencies are not corrected within thirty (30) calendar days, the Port will suspend or cancel the grant application after furnishing written notice to the Sub-Grantee (City).
- C.** This Agreement may be terminated by the Sub-Grantee (City) in the event there is a failure of the Grantee (Port) to perform any of its obligations under this Agreement.
- D.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections, labor actions and/or any other cause beyond the reasonable control of the party whose performance is affected.

#### **V. Conflict of Interest**

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



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

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

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

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

- B. **Publications:** The Sub-Grantee (City) may publish, at its own expense, the results of grant activity without prior review by the Port provided that any publication (written, oral, or visual) contains an acknowledgement of Port Security Grant Program support (as noted below). The Sub-Grantee (City) agrees that any publication (written, visual, or sound, but excluding press releases, newsletters, and issue analyses) issued by the Sub-Grantee describing programs or projects in whole or in part with Federal funds, shall contain the following statement: "This project was supported by FY 2009 ARRA Port Security Grant Program, awarded by the Federal Emergency Management Agency, U.S. Department of Homeland Security.
- C. **Program Income:** All program income generated by this grant during the project period must be reported to the Port following the month earned and must be put back into the project to be used to reduce the federal participation in the program in accordance with OMB Circular A-110.

## **VII. General Provisions**

- A. **Dispute Resolution:**

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

Sub-Grantee acknowledges that it has received and reviewed a copy of the most current version of the Port of Oakland's Unlawful Harassment Policy and Procedures. The purpose of these procedures is to provide an effective and expedited system of resolving allegations of employment discrimination and prevention of unlawful harassment in the workplace. The Sub-Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry age (over 40), physical or mental disability, cancer-related medical condition, a known genetic predisposition to a disease or disorder, veteran status, marital status, or sexual orientation. Sub-Grantee shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: hiring, upgrading, recruitment, advertising, selection for training, including apprenticeship, demotion, transfer, compensation, lay-off or termination, or any other term or conditions of employment.

- C. Modification:** No modification, termination or attempted waiver of this Agreement or any provision hereof shall be valid unless in writing signed by both parties to this Agreement.
- D. Notices:** All notices, requests, demands and other communications required or permitted to be made under this Agreement shall be in writing and shall be given by personal delivery, by certified mail, return receipt requested, first class postage prepaid, or by nationally recognized overnight delivery service, in each case addressed to the party entitled to receive the same at the address specified below. Either party may change the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice. Notice shall be deemed to be effective, if personally delivered, when delivered; if mailed, at midnight on the third business day after being sent by certified mail; and if sent by nationally recognized overnight delivery service, on the next business day following delivery to such delivery service.

**If to the Grantee Port of Oakland:**

Mike O'Brien  
Port Facilities Security Officer  
Port of Oakland  
530 Water Street  
Oakland, CA 94607  
W (510) 627-1303

C (510) 719-8027  
F (510) 835-1641

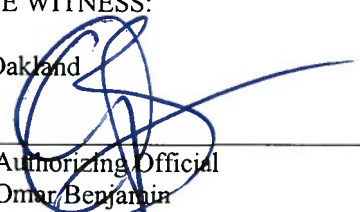
**If to Sub-Recipient Sub-Grantee City of Oakland:**

Renee Domingo  
Director  
Office of Emergency Services Oakland Fire Department  
1605 Martin Luther King Way  
Oakland, CA 94612  
(510) 238-6353

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

FOR THE WITNESS:

Port of Oakland


BY:   
\_\_\_\_\_  
Authorizing Official  
Omar Benjamin  
Executive Director  
Port of Oakland

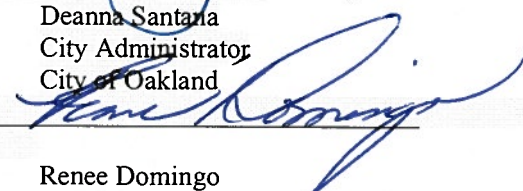
Date

3/1/12

Date:

SUB-RECIPIENT

BY:   
\_\_\_\_\_  
Authorizing Official  
Deanna Santana  
City Administrator  
City of Oakland

BY:   
\_\_\_\_\_  
Renee Domingo  
Director  
Office of Emergency Services  
Oakland Fire Department

City of Oakland Resolution No. 82933

Read and Approved:

BY: Mark Hoffmann  
Interim Fire Chief  
Oakland Fire Department

BY:   
\_\_\_\_\_  
Anthony W. Batts (Chief of Police)  
Oakland Police Department ~ HOWARD JORDAN

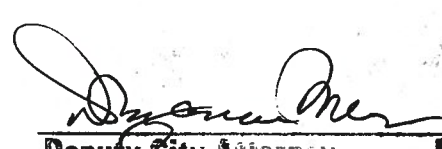
BY: Ken Gordon,  
Interim Director  
Oakland Department of Information Technology

Approved as to form and legality this 1st  
day of March, 2012.

  
\_\_\_\_\_  
Port Attorney

P.A.#. 2012-161

APPROVED AS TO FORM & LEGALITY

  
\_\_\_\_\_  
Deputy City Attorney  
Chief Assistant  
Date 1/10/12

Authorizing Resolution: 82933  
passed July 20, 2010