

## Emilia Uriegas

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**From:** Rodolfo Espinoza [rodolfo.espinoza@hidalgoso.org]  
**Sent:** Wednesday, October 05, 2011 10:00 AM  
**To:** 'Emilia Uriegas'  
**Subject:** FW: Hidalgo County 2008 Operation Stonegarden Close out GAN

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**From:** Paynter, Bill [mailto:Bill.Paynter@dps.texas.gov]  
**Sent:** Tuesday, October 04, 2011 11:39 AM  
**To:** Cynthia E. Careaga  
**Cc:** rodolfo.espinoza@hidalgoso.org; Mendez, Arturo  
**Subject:** Hidalgo County 2008 Operation Stonegarden Close out GAN

Dear Cynthia:

Attached is the Grant Adjustment Notice (GAN) and the Terms and Conditions (T&C) which will close out the 2008 Operation Stonegarden grant (OPSG) for Hidalgo County. Please have the attached 2008 OPSG GAN (Block #10) and exhibits B and C (i.e. the last two pages) of the T&C signed by your Chief Elected Official and returned to me via e-mail attachment.

Please contact Bill Paynter (512-377-0014) or Arturo Mendez (512-377-0022) if you have any questions regarding this request.

Thank you,

Bill Paynter  
Grant Coordinator  
Texas Department of Public Safety  
Texas Homeland Security  
State Administrative Agency  
Phone (512) 377-0014  
Fax (512) 206-3137

10/5/2011

# Texas Homeland Security

2008

## Closeout Grant Adjustment Notice

For

Hidalgo County

Date of Award

10/04/2011

### 1. Sub-Recipient Name and Address

Ramon Garcia  
Hidalgo County Judge  
1615 Closner, Suite J  
Edinburg, TX 78539

2. Prepared By: Paynter

3. SAA Award Number: 08-48215-01

### 4. Federal Grant Information

Federal Grant Title: Operation Stonegarden Grant (OSG)

Federal Grant Award Number: 2008-SG-T8-0009

Date Award Granted to THS: September 3, 2008

Federal Grant Agency: Federal Emergency Management Agency  
Dept. of Homeland Security Preparedness Directorate

### 5. Award Amount and Grant Breakdown

Total Award  
Amount

\$ 2,479,129.24

NOTE: Additional Budget Sheets (Attachment A):

YES

NO

OSG  
CFDA 97.067

\$ 2,479,129.24

This award supersedes all previous awards.

Performance Period: Sep 1, 2008 To Jul 31, 2011

6. Statutory Authority for Grant: This project is supported under Public Law 110-329, the Department of Homeland Security Appropriation Act of 2009.

7. Method of Payment: Primary method is reimbursement. See the enclosed instructions for the process to follow in the submission of invoices.

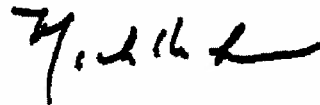
8. Debarment/Suspension Certification: The Sub-Recipient certifies that the subgrantee and its' contractors/vendors are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System at <http://www.epls.gov>.

### 9. Agency Approval

Approving TxDPS Official:

Machelle Pharr, Deputy Assistant Director  
Texas Homeland Security State Administrative Agency  
Texas Department of Public Safety

Signature of TxDPS Official:



### 10. Sub-Recipient Acceptance

I have read and understand the attached Terms and Conditions.

Type name and title of Authorized Sub-Recipient official:

Signature of Sub-recipient Official:

11. Enter Employer Identification Number (EIN)/Federal Texas Identification Number:

12. Date Signed:

13. DATE DUE: 10/14/2011

Signed award and Direct Deposit Form (if applicable) must be returned to TxDPS on or before the above due date.

## TERMS AND CONDITIONS

### Parties to Sub-recipient Agreement

This Sub-recipient agreement is made and entered into by and between the Texas Homeland Security Management/State Administrative Agency, an agency of the State of Texas, hereinafter referred to as "THS" and the funds recipient, hereinafter referred to as the "Sub-recipient." Furthermore, THS and the Sub-recipient are collectively hereinafter referred to as the "Parties." By this Sub-recipient agreement's execution, the Parties have severally and collectively agreed to be bound to the mutual obligations and to the performance and accomplishment of the tasks described in this Sub-recipient agreement. The Sub-recipient Agreement is only an offer until the Sub-recipient returns the signed copy of the 2008 Sub-recipient Agreement in accordance with the date provided in the transmittal letter and in the agreement.

### Sub-recipient Purpose and Overview

**A. Purpose and Overview.** Sub-grant funds provided shall be used to provide law enforcement and emergency response communities with enhanced capabilities for detecting, deterring, disrupting, preventing, and responding to potential threats of manmade, natural disasters and acts of terrorism. The Sub-recipient agrees that all allocations and use of funds under this grant will be in accordance with the Homeland Security Grant Program Guidelines and Application Kit for that fiscal year and must support the goals and objectives included in the State Homeland Security Strategic Plan and the Urban Area Homeland Security (UASI) Strategies. The funds must be used to conform with the State Homeland Security Strategic Plan, follow the projects outlined in the approved investment justifications used to make the FY 2008 grant application and as described in the federal program guidelines found at [www.fema.gov/pdf/government/grant/hsgp/fy08\\_hsgp\\_guide.pdf](http://www.fema.gov/pdf/government/grant/hsgp/fy08_hsgp_guide.pdf). Further, as outlined in the 2008 grant guidance, 2008 HSGP will focus on three objectives as the highest priorities. These three objectives are: 1. Measuring progress toward achieving the National Preparedness Guidelines; 2. Strengthening improvised explosive device (IED) attack deterrence, prevention, and protection capabilities; and 3. Strengthening preparedness planning. At least 25 percent of the total FY 2008 HSGP funding must be dedicated toward enhancing capabilities related to objectives 2 and 3 as identified above. The 25 percent requirement applies to the total award amount for each State across all four programs, not individual awards for SHSP, UASI, MMRS, and CCP.

**B. Standard of Performance.** The Sub-recipient shall perform all activities and projects entered into the SAA web-based grants management system approved by its Council of Governments (COG) and by the State Administrative Agency (SAA). The Sub-recipient shall perform all activities in accordance with all terms, provisions and requirements set forth in this Sub-recipient agreement and the:

1. Applicable Laws and Regulations, hereinafter referred to as "Exhibit A";
2. Certifications, hereinafter referred to as "Exhibit B"; and
3. Certification Regarding Lobbying for Sub-recipient Agreements, Grants, Loans, and Cooperative Agreements, hereinafter referred to as "Exhibit C".

**C. Failure to Perform.** In the event the Sub-recipient fails to implement the project(s) entered into The SAA web-based grants management system, or comply with any of this Sub-recipient agreement's provisions, in addition to the remedies specified in this Sub-recipient agreement, the Sub-recipient is liable to THS for an amount not to exceed the award amount of this Sub-recipient agreement and may be barred from applying for or receiving additional Homeland Security Grant Program funds or any other federal program funds administered by THS until repayment to THS is made and any other compliance or audit finding is satisfactorily resolved.

### THS Obligations

**A. Measure of Liability.** THS shall be liable for actual and reasonable costs incurred by the Sub-recipient during the Sub-recipient agreement period for performances rendered under this Sub-recipient agreement by the Sub-recipient, subject to the limitations set forth in this Section. THS shall not be liable to the Sub-recipient for any costs incurred by the Sub-recipient that are not allowable costs.

**B. Sub-recipient Agreement Funds Defined and Limit of Liability.** The term "Sub-recipient agreement funds" as used in this Sub-recipient agreement means funds provided by THS under the HSGP program. The term

"Sub-recipient's funds" or match funds as used in this Sub-recipient agreement means funds provided by the Sub-recipient.

Notwithstanding any other provision of this Sub-recipient agreement, the total of all payments and other obligations incurred by THS under this Sub-recipient agreement shall not exceed the Total Award Amount listed on the cover page of the Sub-recipient agreement.

**C. Excess Payments.** The Sub-recipient shall refund to THS any sum of Sub-recipient agreement funds that has been paid to the Sub-recipient by THS or that THS determines has resulted in overpayment to the Sub-recipient that THS determines has not been spent by the Sub-recipient in accordance with this Sub-recipient agreement. No refund payment(s) may be made from local, state or federal grant funds unless repayment with grant funds is specifically permitted by statute or regulation. The Sub-recipient shall make such refund to THS within thirty (30) days after THS requests such refund.

#### **Suspension**

Notwithstanding the provisions of Chapter 2251, Texas Government Code, in the event the Sub-recipient fails to comply with any of this Sub-recipient Agreement's terms, THS may, upon written notification to the Sub-recipient, suspend this Sub-recipient agreement in whole or in part, withhold payments to the Sub-recipient and prohibit the Sub-recipient from incurring additional obligations of Sub-recipient agreement funds.

#### **Termination**

**A. THS's Right to Terminate.** THS shall have the right to terminate this Sub-recipient agreement, in whole or in part, at any time before the end of the Performance Period, whenever THS determines that the Sub-recipient has failed to comply with any of this Sub-recipient agreement's terms. THS shall notify the Sub-recipient in writing prior to the thirtieth (30<sup>th</sup>) day preceding the termination of such determination and include:

1. the reasons for such termination;
2. the effective date of such termination; and
3. in the case of partial termination, the portion of the Sub-recipient agreement to be terminated.

**B. Parties' Right to Terminate.** In addition to THS's right to terminate specified in Subsection A of this section, both Parties shall have the right to terminate this Sub-recipient agreement, in whole or in part, when the Parties agree that the continuation of the activities funded under this Sub-recipient agreement would not produce beneficial results commensurate with the further expenditure of Sub-recipient agreement funds. The Parties shall agree, in writing, upon the termination conditions, including the effective date of termination and in the case of partial termination, the portion of the Sub-recipient agreement to be terminated.

#### **Conflict of Interest**

**A. Financial Interest Prohibited.** A conflict of interest may arise when the employee, officer or agent; any member of his or her immediate family; his or her partner; or, any organization that employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform a subcontract pursuant to this Sub-recipient agreement. The Sub-recipient shall ensure that no employee, officer, or agent of the Sub-recipient shall participate in the selection, in the award or administration of a subcontract supported by Sub-recipient agreement funds pursuant to this Sub-recipient agreement and comply with Chapter 171, Texas Local Government Code.

**B. Other Prohibited Interests.** In all cases not governed by Subsection A of this Section and except for eligible administrative or personnel costs, no person who is an employee, agent, consultant, officer, elected official, appointed official of the Sub-recipient or of a subcontractor of the Sub-recipient, in Subsection C of this Section who exercises or have exercised any functions or responsibilities with respect to the activities assisted under this Sub-recipient agreement or any other HSGP Sub-recipient agreement who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, have an interest in or benefit from the activity or have any interest in any Sub-recipient agreement, subcontract or agreement with respect to the activities or the proceeds either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.

**C. Inclusion in Subcontracts.** The Sub-recipient shall include the substance of this Section in all subcontracts.

#### **Monitoring**

THS reserves the right to perform periodic on-site monitoring of the Sub-recipient's compliance with this Sub-recipient agreement's terms and conditions and of the adequacy and timeliness of the Sub-recipient's performance pursuant to this Sub-recipient agreement. After each monitoring visit, THS shall provide the Sub-recipient with a written report of the monitor's findings. If the monitoring report notes deficiencies in the Sub-recipient's performance under this Sub-recipient agreement's terms, the monitoring report shall include requirements for the timely correction of such deficiencies by the Sub-recipient. Failure by the Sub-recipient to take action specified in the monitoring report may be cause for this Sub-recipient agreement's suspension or termination pursuant to Sections on the Suspension and/or Termination above.

#### **Audit**

**A. Audit of Federal and State Funds.** The Sub-recipient shall arrange for the performance of an annual financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement under the Single Audit Act (OMB Circular A – 133; 44 C.F.R. 13.26) and as outlined in Exhibit A. The Sub-recipient will also comply with Texas Government Code, Chapter 783, 1 TAC 5.141.et.seq. and the Uniform Grant Management Standards (UGMS), State Uniform Administrative Requirements for Grants and Cooperative Agreements.

**B. THS's Right to Audit.** Notwithstanding Subsection A of this Section, THS reserves the right to conduct a financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement. The Sub-recipient agrees to permit THS or its authorized representative to audit the Sub-recipient's records and to obtain any documents, materials or information necessary to facilitate such audit.

**C. Sub-recipient's Liability for Disallowed Costs.** The Sub-recipient understands and agrees that it shall be liable to THS for any costs disallowed pursuant to financial and compliance audit(s) of Sub-recipient agreement funds. The Sub-recipient further understands and agrees that reimbursement to THS of such disallowed costs shall be paid by the Sub-recipient from funds that were not provided or otherwise made available to the Sub-recipient pursuant to this Sub-recipient agreement or any other federal contract.

**D. Sub-recipient's Facilitation of Audit.** The Sub-recipient shall take such action to facilitate the performance of such audit(s) conducted pursuant to this Section as THS may require of the Sub-recipient.

**E. State Auditor's Office.** The Sub-recipient understands that acceptance of Sub-recipient agreement funds acts as acceptance of the authority of the State Auditor's Office or any successor agency to conduct an audit or investigation in connection with these funds. The Sub-recipient further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The Sub-recipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Sub-recipient and the requirement to cooperate is included in any subcontract it awards.

For FY 2008, the NIMSCAST will be the required means to report NIMS compliance for FY 2009 preparedness award eligibility. All State and Territory direct preparedness Sub-recipients will be required to submit their compliance assessment via the NIMSCAST by September 30, 2008. The State or Territory department/agency awardee reserves the right to determine compliance reporting requirement of their sub-awardees (locals) in order to disperse funds at the local level.

#### **Reimbursement**

Sub-recipient agrees to make no request for reimbursement prior to return of this agreement signed by the authorized Sub-recipient representative. Sub-recipient also agrees to make no request for reimbursement for goods or services procured by Sub-recipient prior to the performance period start date of this agreement.

**A. Request for Advance or Reimbursement.** The Sub-recipient shall submit to THS, a properly completed Local Purchase Submission Cover Sheet as often as actually needed. THS retains the authority to approve or deny amount requested and shall not make disbursement of any such payment until THS has reviewed

and approved such a request. The Local Purchase Submission Cover Sheet shall be supported by documentation as referenced by the SAA web-based grants management system and subsequent policy updates.

**B. Request for Advance Funds and Transfer of Funds.** The Sub-recipient's requests for an advance of Sub-recipient agreement funds shall be limited to the minimum amounts needed for effective operation of their project(s) under this Sub-recipient agreement and shall be timed as closely as possible to be in accord with actual cash requirements. The Sub-recipient shall establish procedures to minimize the time elapsing between the transfer of funds from THS to the Sub-recipient and shall ensure that such funds are disbursed within fifteen (15) days or as soon as administratively possible.

**C. Payment Contingent.** Notwithstanding the provisions of Subsection A of this Section, payments under this Sub-recipient agreement are contingent upon the Sub-recipient's performance of its contractual obligations.

#### **Urban Areas Security Initiative (UASI) Grants**

A. If the Sub-recipient is a participant in a UASI program, during the performance period of this grant, Sub-recipient agrees to adhere to the UASI strategy, goals, objectives, and implementation steps.

B. Sub-recipient agrees that, during the performance period of this grant, all communications equipment purchases must be reviewed and approved by the Regional Interoperable Communications Committee and the UASI points of contact (voting members), if applicable.

#### **UASI Non-Profit Security Grant Program (NSGP)**

A. The Sub-recipient agrees that all allocations, uses of funds, and other associated program and administrative requirements under this grant will be in accordance with the Fiscal Year (FY) 2008 UASI Non-Profit Security Grant Program (NSGP) Program Guidance and Application Kit, Information Bulletin number 252, and the FY 2008 UASI NSGP Frequently Asked Questions (FAQs) Parts 1 and 2. All grant Sub-recipients are assumed to have read, understood, and accepted the FY 2008 UASI NSGP Program Guidance and Application Kit, Information Bulletin Number 252 and the FAQs as binding.

B. Sub-recipients must meet a 75 percent Federal-25 percent Sub-recipient soft match requirement. Sub-recipient contributions must be from non-Federal sources. For all costs other than training, the Sub-recipients match may be met through cash, training investments related to use of allowable equipment purchased with the grant, or training investments related to general purpose security and emergency preparedness for staff. In the case of training projects, awardees must meet the matching requirement through cash. In no event can regular personnel costs such as salary, overtime, or other operational costs unrelated to training be used to satisfy the matching requirement.

C. Non-governmental organization Sub-recipients are required to meet certain National Incident Management System (NIMS) compliance requirements. All emergency preparedness, response, and/or security personnel in the non-profit organization participating in the development, implementation, and/or operation of resources and/or activities awarded through this grant are compelled to complete training programs consistent with the NIMS National Standard Curriculum Development Guide. Minimum training includes IS-700 NIMS: An Introduction.

D. Sub-recipients are responsible for keeping a copy of the 501(c)(3) registration number or IRS Letter of Recognition of Sub-grantees on file. Those Sub-recipients who submitted investment justifications, subsequently selected for award, by non-profit organizations which do not hold or have not formally applied for a 501(c)(3) registration number, are responsible for maintaining an affidavit and/or other indicia certifying or verifying their 501(c)(3) compliance on file for review by DHS, in accordance with the FY 2008 UASI NSGP Q&A Part 2.

E. FY 2008 UASI NSGP allowable equipment costs include only the two Authorized Equipment List (AEL) categories identified in the FY 2008 UASI NSGP Program Guidance and Application Kit. These categories are 1) Physical Security Enhancement Equipment, and 2) Inspection and Screening Systems. All allowable equipment costs must fall within these two categories. Interoperable communications equipment, aesthetic enhancement, including business, shrubs, or flowers, general-use vehicles, or related general-use equipment is prohibited under this grant program if it does not fall within one of the two previously identified AEL categories. Additionally, any costs associated with exercises are strictly prohibited. All other training

and management and administrative (M&A) costs must be in accordance with the FY 2008 UASi NSGP Program Guidance and Application Kit, Information Bulletin Number 252, and the FY 2008 NSGP FAQs, Parts 1 and 2.

F. The Sub-recipient also agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the U. S. Department of Homeland Security."

#### **Interoperable Communication Project Compliance**

1. Before a local jurisdiction may submit a project for consideration by the State, a preliminary review must be done at the regional level by the Communications Committee or some similar group of the appropriate Council of Governments, Development Council or Planning Council. (Where possible, reviewers should represent a cross-section of the communications community and include representatives from cities, counties and Tribes where appropriate; conventional and trunked systems, and VHF, UHF, 700 MHz, 800 MHz and 900 MHz systems.) Jurisdictions must have baseline information (towers and POC/name) entered into CASM to show the jurisdictions' commitment to adhere to the SCIP. Projects that are deemed to satisfactorily meet the State's Plan will be submitted to the State for formal review.

#### **National Incident Management System (NIMS) and the Incident Command System (ICS)**

Sub-recipients must have adopted and be implementing the National Incident Management System (NIMS) and the Incident Command System (ICS) at the local level. NIMS compliance for 2008 must be achieved by completing actions outlined in the NIMS Implementation Matrix.

A. Adoption. The jurisdiction or organization must have formally adopted NIMS as its incident management system through ordinance, court order, or resolution. A copy of the adoption document should be provided to the Preparedness Section of the Division of Emergency Management.

B. Implementation. The jurisdiction or organization must be implementing the principles and policies of NIMS/ICS, including these major requirements:

1. Identifying specific NIMS training requirements for local emergency responder and emergency management positions; then obtaining or providing required training, and documenting it. For further information on NIMS training, see: [http://www.fema.gov/emergency/nims/nims\\_training.shtml](http://www.fema.gov/emergency/nims/nims_training.shtml)
2. Updating jurisdiction or organization emergency plans and procedures to address the NIMS/ICS organizational structure, major functions, concepts, policies, and procedures.
3. Utilizing NIMS/ICS for day-to-day all-hazard emergency response and during exercises.
4. Participating in local, regional, or intrastate mutual aid programs.
5. Maintaining an inventory of emergency response assets (Texas Regional Resource Network), and identifying key assets by resource typing standards developed by FEMA to facilitate multi-agency response. For resource typing information, see: <http://www.fema.gov/emergency/nims/rm/rt.shtml>. This is accomplished by registering with the Texas Regional Resource Network (TRRN) and updating the information regularly. Additionally, a certification form must be on file with THS for every county and local jurisdiction.
6. Complete the NIMS baseline assessment and develop a local NIMS implementation plan.
7. Participate in an all-hazard exercise program based on NIMS that involves responders from multiple disciplines and multiple jurisdictions.
8. All Primary jurisdictions must possess an independent NIMSCAST account.

For a more detailed description of these requirements, as well as other NIMS implementation requirements, see [http://www.fema.gov/pdf/emergency/nims/imp\\_mtrx\\_states.pdf](http://www.fema.gov/pdf/emergency/nims/imp_mtrx_states.pdf)

FY 08 NIMS implementation requirements must be completed by September 30, 2008.

#### **Other Requirements (These requirements DO NOT apply to NSGP Sub-recipients)**

A. During the performance period of this grant, Sub-recipients must maintain an emergency management plan at the Intermediate Level of planning preparedness or higher, as prescribed by THS. This may be

accomplished by a jurisdiction maintaining its own emergency management plan or participating in an inter-jurisdictional emergency management program that meets the required standards. If THS identifies deficiencies in the Sub-recipient's plan, Sub-recipient will correct deficiencies within 60 days of receiving notice of such deficiencies from THS.

B. Projects identified in the SAA web-based grant management system must identify and relate to the goals and objectives indicated by the applicable 12 approved project investments for the period of performance of the grant.

C. During the performance period of this grant, Sub-recipient agrees that it will participate in a legally-adopted county and/or regional mutual aid agreement.

D. During the performance period, the Sub-recipient must register as a user of the Texas Regional Response Network (TRRN) and identify all major resources such as vehicles and trailers, equipment costing \$5,000 or more and specialized teams/response units equipped and/or trained using grant funds (i.e. hazardous material, decontamination, search and rescue, etc.). This registration is to ensure jurisdictions or organizations are prepared to make grant funded resources available to other jurisdictions through mutual aid.

E. Sub-recipients must submit Fiscal Year 2008 indirect Cost Allocation Plan signed by Cognizant Agency. Plan should be forwarded to the SAA along with the Planning and Administration Grant Budget Form.

F. Council of Governments (COG) will follow guidelines listed in the FY 08 COG Statement of Work.

G. Up to 15% of the program funds for SHSP, UASI and LETPP may be used to support the hiring of full or part-time personnel to conduct program activities that are allowable under the FY 2007 HSGP (i.e., planning, training program management, exercise program management, etc) The ceiling on personnel costs does not apply to contractors, and is in addition to eligible management and administrative (M&A) costs and eligible hiring of intelligence analysts. Sub-recipients may hire staff only for program management functions, not operational duties. Hiring planners, training program coordinators, exercise managers, and grant administrators fall within the scope of allowable program management functions.

H. The State's 24 planning regions are voluntary associations of local governments organized pursuant to state law as regional planning commissions, councils of government, development councils, and area councils. It is recognized that one of the major functions of state planning regions as homeland security grant Sub-recipients is to perform a wide variety of planning and some program administration for both their region and on behalf of the cities and counties within the region that may also be homeland security grant Sub-recipients.

#### **Closing The Grant**

A. The Sub-recipient must have all equipment ordered by January 14, 2010. The last day for submission of invoices is February 28, 2011.

B. THS/SAA will close a sub-award after receiving Sub-recipient's final performance report indicating that all approved work has been completed and all funds have been disbursed, completing a review to confirm the accuracy of the reported information, and reconciling actual costs to awards modifications and payments. If the close out review and reconciliation indicates that the Sub-recipient is owed additional funds, THS/SAA will send the final payment automatically to the Sub-recipient. If the Sub-recipient did not use all the funds received, THS/SAA will issue a Grant Adjustment Notice (GAN) to recover the unused funds.

C. THS/SAA will unilaterally close out this grant if sub recipient does not reconcile account and sign closeout GAN by May 31, 2011.

#### **Restrictions, Disclaimers and Notices**

A. Approval of this award does not indicate approval of any consultant rate in excess of \$450 per day. A detailed justification must be submitted to and approved by THS/SAA prior to obligation or expenditure of such funds.

B. in cases where local funding is established by COGs, release of funds by THS is contingent upon regional funding allocation approval by the Sub-recipient's COG governing board.

C. Notwithstanding any other agreement provisions, the parties hereto understand and agree that THS's obligations under this agreement are contingent upon the receipt of adequate funds to meet THS's liabilities hereunder. THS shall not be liable to the Sub-recipient for costs under this Agreement which exceed the amount specified in the Notice of Sub-recipient Award.

D. Notice. All notices or communication required or permitted to be given by either party hereunder shall be deemed sufficiently given if mailed by registered mail or certified mail, return receipt requested, or sent by overnight courier, such as Federal Express, to the other party at its respective address set forth below or to such other address as one party shall give notice of to the other from time to time hereunder. Mailed notices shall be deemed to be received on the third business day following the date of mailing. Notices sent by overnight courier shall be deemed received the following business day.

Chief  
Division of Emergency Management  
Homeland Security Office of the Governor  
PO Box 4087  
Austin, TX 78773-0220

#### **Uniform Administrative Requirements, Cost Principles, Audit Requirements and Program Income**

Except as specifically modified by law or this Sub-recipient agreement's provisions, the Sub-recipient shall administer the award through compliance with all Applicable Laws and Regulations, Exhibit A, but specifically with:

##### **A. Administrative Requirements**

1. 44 C.F.R. Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
2. 2 C.F.R. Part 215, Uniform Administrative Requirements for Grants and Agreements with institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

##### **B. Cost Principles**

1. 2C.F.R. Part 225, Cost Principles for State, Local and Tribal Governments
2. 2C.F.R. Part 220, Cost Principles for Education Institutions
3. 2C.F.R. Part 230, Cost Principles for Non-Profit Organizations
4. Federal Acquisition Regulation Subpart 31.2, Contracts with Commercial Organizations

##### **C. Audit Requirements – OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.**

#### **Retention And Accessibility Of Records**

A. Retention of Records. The Sub-recipient shall maintain fiscal records and supporting documentation for all expenditures of Sub-recipient agreement funds pursuant to OMB Circular A-87, 44 C.F.R. § 13.42 and this Sub-recipient agreement. The Sub-recipient shall retain these records and any supporting documentation for the greater of three (3) years from the completion of this project's public objective (close of the Sub-recipient agreement), including program requirements and financial obligations, or the period of time required by other applicable laws and regulations as described in Exhibit A.

B. Access to Records. The Sub-recipient shall give the United States Department of Homeland Security (DHS), the Inspector General, the General Accounting Office, the Auditor of the State of Texas, THS, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by the Sub-recipient pertaining to this Sub-recipient agreement including records concerning the past use of HSGP funds. Such rights to access

shall continue as long as the records are retained by the Sub-recipient. The Sub-recipient agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, Chapter 552, Texas Government Code.

C. Inclusion in Subcontracts. The Sub-recipient shall include the substance of this Section in all subcontracts.

#### **Subcontracts**

A. THS's Approval of Subcontract and Liability. The Sub-recipient may subcontract for performances described in this Sub-recipient agreement without obtaining THS's prior written approval.

B. Sub-recipient Liability. In no event shall any provision of this Section be construed as relieving the Sub-recipient of the responsibility for ensuring that the performances rendered under all subcontracts comply with all of this Sub-recipient agreement's terms as if such performances rendered were rendered by the Sub-recipient. THS's approval under this Section does not constitute adoption, ratification or acceptance of the Sub-recipient's or a subcontractor's performance.

C. Applicable Law. The Sub-recipient shall comply with 44 C.F.R. § 13.1-13.52 and all applicable federal and state laws outlined in Exhibit A and local laws, regulations and ordinances related to making procurements under this Sub-recipient agreement.

D. Escrow Retainage for Construction Contracts. THS shall require Sub-recipient to maintain an escrow retainage of the Sub-recipient agreement funds budgeted for construction and rehabilitation in the amount of five percent (5%) of each construction and/or rehabilitation subcontract entered into by the Sub-recipient. Before the retainage fees for construction contracts are released, THS shall receive a complete and executed Certificate of Construction Completion and Final Wage Compliance Report and the Sub-recipient shall certify it has received as-built plans for this Sub-recipient agreement's funded construction activities.

#### **Legal Authority**

A. Signatory Authority. The Sub-recipient assures and guarantees that the Sub-recipient possesses the legal authority to enter into this Sub-recipient agreement, receive Sub-recipient agreement funds and to perform the services the Sub-recipient has obligated itself to perform pursuant to this Sub-recipient agreement.

B. Authorized Representative. The person or persons signing and executing this Sub-recipient agreement on the Sub-recipient's behalf do warrant and guarantee that he, she or they have been duly authorized by the Sub-recipient to execute this Sub-recipient agreement on the Sub-recipient's behalf and to validly and legally bind the Sub-recipient to all contractual terms, performances and provisions.

#### **Notice Of Litigation and Claims**

The Sub-recipient shall give THS immediate notice in writing of:

1. any action, including any proceeding before an administrative agency, filed against the Sub-recipient arising out the performance of any subcontract under this Sub-recipient agreement; and
2. any claim against the Sub-recipient, the cost and expense of which the Sub-recipient may be entitled to be reimbursed by HSGP.

Except as otherwise directed by THS, the Sub-recipient shall furnish immediately to THS copies of all documentation received by the Sub-recipient with respect to such action or claim.

#### **Indemnification**

To the extent permitted by law, the Sub-recipient agrees to hold THS harmless and to indemnify THS from and against any and all claims, demands and causes of action of every kind and character that may be asserted by any party occurring or in any way incident to, arising out of or in connection with the services to be performed by the Sub-recipient pursuant to this Sub-recipient agreement.

#### **Changes and Amendments**

A. Written Amendment. Except as specifically provided otherwise in this Sub-recipient agreement, any alterations, additions or deletions to this Sub-recipient agreement's terms shall be made through Grant Adjustment Notices generated by the SAA web-based grants management system and executed by the Parties.

B. Authority to Amend. This Sub-recipient agreement's performances shall be rendered in accordance with the Act, Exhibit A, the assurances and certifications made to THS by the Sub-recipient and the assurances and certifications made to DHS by the State of Texas with regard to the operation of the HSGP. Amendments may further be amended by THS, during the period of this Sub-recipient agreement's performance as THS issues policy directives that serve to establish, interpret or clarify this Sub-recipient agreement's performance requirements. Such policy directives shall be promulgated by THS in the form of Information Bulletins and shall have the effect of qualifying this Sub-recipient agreement's terms and shall be binding upon the Sub-recipient as if written in the Sub-recipient agreement.

C. Effect of Changes in Federal and State Laws. Any alterations, additions, or deletions to this Sub-recipient agreement's terms that are required by the changes in federal and state laws or regulations are automatically incorporated into this Sub-recipient agreement without written amendment to this Sub-recipient agreement and shall become effective on the date designated by such law or regulation. Federal Emergency Management Agency (FEMA) periodically publishes information Bulletins to release, update, amend or clarify grants and programs which it administers. FEMA's National Preparedness Directorate information Bulletins can be accessed at <http://www.ojp.usdoj.gov/odp/docs/bulletins.htm> and are incorporated by reference into this sub-grant.

#### **Headings**

Headings and captions of this Sub-recipient agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Sub-recipient agreement's terms or be used to interpret or assist in the construction of this Sub-recipient agreement.

#### **Oral and Written Agreements**

A. Prior Agreements. All oral and written agreements between the Parties relating to this Sub-recipient agreement's subject matter that were made prior to Date of Execution have been reduced to writing and are contained in this Sub-recipient agreement.

B. Exhibits. The exhibits enumerated and denominated in the agreement are hereby made a part of this Sub-recipient agreement and constitute promised performances by the Sub-recipient in accordance with the Sub-recipient agreement and the Exhibits.

C. Commissioner's Signature. This Sub-recipient agreement is not effective unless signed by the Chief of THS or by his authorized designee.

#### **Waiver**

Any right or remedy provided for in this Sub-recipient agreement provision shall not preclude the exercise of any other right or remedy under this Sub-recipient agreement or under any provision of law, nor shall any action taken or failure to take action in the exercise of any right or remedy be deemed a waiver of any other rights or remedies at any time.

#### **Venue**

For purposes of litigation pursuant to this Sub-recipient agreement, venue shall lie in Travis County, Texas.



[http://www.fema.gov/emergency/nims/nims\\_training.shtm](http://www.fema.gov/emergency/nims/nims_training.shtm)

I. **PROGRAM INCOME** - If a Sub-recipient is approved for an advance, the funds must be deposited in a separate interest bearing account and are subject to the rules outlined in the Uniform Rule 28C.F.R. Part 66, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, at [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/28cfrv2\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/28cfrv2_04.html) and the Uniform Rule 28C.F.R. Part 70, Uniform Administrative Requirements for Grants and Agreements (Including sub-awards) with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations, at [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/28cfr70\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/28cfr70_03.html) . Sub-recipients must report any interest earned to THS/SAA. Any interest earned in excess of \$100 must, on a quarterly basis, be remitted to:

United States Department of Health and Human Services  
Division of Payment Management Services  
P.O. Box 6021  
Rockville, MD 20852

J. **AUDITS** - The Sub-recipient shall arrange for the performance of an annual financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement under the Single Audit Act (OMB Circular A – 133; 44 C.F.R. 13.26) [http://edocket.access.gpo.gov/cfr\\_2007/octotr/44cfr13.26.htm](http://edocket.access.gpo.gov/cfr_2007/octotr/44cfr13.26.htm) .

K. **GRANT ADMINISTRATION** - The Sub-recipient will also comply with Texas Government Code, Chapter 783, <http://lo2.tlc.state.tx.us/statutes/gv.toc.htm> ; and the Uniform Grant Management Standards (UGMS), State Uniform Administrative Requirements for Grants and Cooperative Agreements, [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?si=T&app=9&p\\_dir=N&p\\_floc=111847&p\\_floc=&p\\_ploc=1&pg=2&p\\_tac=&ti=1&pt=1&ch=5&ri=141](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?si=T&app=9&p_dir=N&p_floc=111847&p_floc=&p_ploc=1&pg=2&p_tac=&ti=1&pt=1&ch=5&ri=141) Sub-recipients must also comply with 44,C.F.R., Part 13, [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/44cfr13\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/44cfr13_07.html) ; with 2C.F.R. Part 215 [http://www.access.gpo.gov/nara/cfr/waisidx\\_08/2cfrv1\\_08.html#215](http://www.access.gpo.gov/nara/cfr/waisidx_08/2cfrv1_08.html#215) , 2C.F.R. Part 225, Part 220 and Part 230. Parts 220 and 230 are not available on-line at this time. A link will be provided as soon as it becomes available.

L. **PROPERTY ADMINISTRATION** – TAC Title 1, Part 5, Chapter 116, [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=3&ti=1&pt=5](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=3&ti=1&pt=5)

M. **PUBLICATIONS** – 44 C.F.R., Section 13.34 [http://edocket.access.gpo.gov/cfr\\_2007/octotr/44cfr13.34.htm](http://edocket.access.gpo.gov/cfr_2007/octotr/44cfr13.34.htm)

1. Sub-recipient acknowledges that FEMA National Preparedness Directorate reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (1) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which a recipient or Sub-recipient purchases ownership with Federal support. The Recipient agrees to consult with NPD regarding the allocation of any patent rights that arise from, or are purchased with, this funding.

2. The Sub-recipient agrees that all publications created with funding under this grant shall prominently contain the following statement: "This Document was prepared under a grant from the National Preparedness Directorate, United States Department of Homeland Security. Point of view or opinions expressed in the document are those of the authors and do not necessarily represent the official position or policies of U.S. Department of Homeland Security."

## CERTIFICATIONS

i, \_\_\_\_\_ as Mayor/County Judge of \_\_\_\_\_, Texas, hereinafter referred to as the "Sub-recipient," certify the following with respect to the expenditure of Sub-recipient agreement funds.

- A. The Sub-recipient shall minimize displacement of persons as a result of activities assisted with Sub-recipient agreement funds.
- B. The program shall be conducted and administered in conformity with the Civil Rights Act of 1964 (42 U.S.C. § 2000a et seq.)
- C. As specified by THS and FEMA, in the event that displacement of residential dwellings shall occur in connection with a project assisted with HSGP funds, the Sub-recipient shall follow a residential anti-displacement and relocation assistance plan.
- D. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28C.F.R. Part 67, for prospective participants in primary covered transactions, as defined at 28C.F.R. Part 67, Section 67.510. (Federal Certification) The Sub-recipient certifies that it and its principals and vendors:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency; Sub-recipients can access debarment information by going to [www.epis.gov](http://www.epis.gov) and the State Debarred Vendor List [http://www.window.state.tx.us/procurement/prog/vendor\\_performance/debarred/](http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/).
  2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (D)(2) of this certification; and
  4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and
  5. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application. (Federal Certification)
- E. Sub-recipient understands and certifies that it will not 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 FEMA National Preparedness Directorate.
- F. The Sub-recipient certifies federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Sub-recipient may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

\_\_\_\_\_  
Chief Elected Official, Mayor/County Judge      Date

**EXHIBIT C**

**CERTIFICATION REGARDING LOBBYING FOR  
SUB-RECIPIENT AGREEMENTS, GRANTS, LOANS,  
AND COOPERATIVE AGREEMENTS**

The undersigned, \_\_\_\_\_, as Mayor/County Judge of the \_\_\_\_\_, Texas certifies the following to the best of his knowledge and belief.

A. No federal appropriated funds have been paid or shall be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with the awarding of any federal Sub-recipient agreement, 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 Sub-recipient agreement, grant, loan or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Sub-recipient agreement grant, loan or cooperative agreement, the undersigned shall complete and submit standard form Disclosure Form to Report Lobbying form in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards including sub-contracts, sub-grants and Sub-recipient agreements under grants, loans, and cooperative agreements and that all Sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon that 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 31 U.S.C § 1352. 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.

\_\_\_\_\_  
Chief Elected Official, Mayor/County Judge      Date