



Homeland Security

COOPERATIVE AGREEMENT

TERMS AND CONDITIONS

RECIPIENT: Minnesota Pollution Control Agency

AGREEMENT NO: 2009-OHA-091-000027

AMENDMENT NO: n/a

PROJECT TITLE: BioWatch Program: Field Operations and Sample Collection Activities

CFDA NO: 97.091

ARTICLE I – AUTHORIZING LEGISLATION

Department of Homeland Security Appropriations Act, 2009, Public Law 110-329, 122 Stat. 3691.

ARTICLE II - PROGRAM DESCRIPTION

The Recipient shall perform the work described in the Program Narrative Statement, which is included as part of the application package and made part of this Cooperative Agreement (hereinafter "Award") by reference in Article XVII, Governing Provisions.

ARTICLE III – PERFORMANCE AND BUDGET PERIOD

A. Performance Period.

1. The Performance Period shall be for two (2) years, from February 1, 2009 through January 31, 2011, unless extensions have been approved. This is contingent on acceptable performance as determined by the Department of Homeland Security (DHS), approved annual DHS continuation application, and the availability of appropriated funds.
2. The Recipient shall only incur costs or obligate funds for approved activities within the approved Budget Period.

3. Ninety days prior to the annual expiration date of each budget year, the Recipient shall submit a continuation application to request the next year’s incremental funding. The application shall include a budget and a program narrative describing the activities to be performed in the Budget Period for which the funding is requested.

B. Budget Period.

1. The Budget Period is for one year increments from the effective date of this Award: February 1, 2009 through January 31, 2010.
2. Annual continuation funding will be provided for subsequent years contingent on DHS’ determination of acceptable performance by the Recipient of the projects approved under this Award, an approved continuation application, and subject to the availability of appropriated funds.
3. Unless the Recipient has received prior written approval from the DHS Grants Officer, the Recipient shall not incur costs or obligate funds for which it intends to seek reimbursement from DHS for any purpose pertaining to the operation of the project, program, or activities prior to the approved Budget Period for each year.

ARTICLE IV – AMOUNT OF AWARD

A. This Award is for the administration and completion of an approved Homeland Security program/project within the Performance Period identified in the approved application. Award funds shall not be used for other purposes.

B. Approved Budget. The approved budget for the Budget Period February 1, 2009 through January 31, 2010, for this Award by category is:

OBJECT CLASS CATEGORY	FEDERAL APPROVED	NON-MONETARY FEDERAL APPROVED	TOTAL
Personnel	(b)	(4)	
Fringe Benefits			
Travel			
Equipment			
Supplies			
Contractual			
Construction			
Other			
Total Direct Charges			
Indirect Charges			
TOTAL			

C. Funding.

Total Approved Funding	\$980,020
Less Previous Funding	0
Funds This Action	\$980,020

- D. Cost Share/Match. There is no cost-share or match required for this funding. The Department of Homeland Security will pay up to 100% of the costs identified in the approved budget listed under Article IV, Section B. The maximum funding for this award is \$980,020 unless Article XII.A.3 (Amendments and Revisions, Budget Revisions) applies.
- E. Funding Restrictions. DHS Award funds may only be used for the purpose set forth in this Award, and must be consistent with the statutory authority for the award. Award funds may not be used for matching funds for other federal Grants or Cooperative Agreements, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, federal funds may not be used to sue the Federal Government or any other government entity.
- F. Construction Costs. Construction costs are prohibited under this Award. Costs to modify an existing monitoring site platform to allow the installation of BioWatch samplers are not considered construction costs.
- G. Other. Federal employees are prohibited from serving in any capacity, paid or unpaid, on any proposal submitted under this program except for the Federal Involvement identified under Article VII (DHS Involvement) of this Award. Federal employees shall not receive funds under this Award.

ARTICLE V – PROGRAM TERMS AND CONDITIONS

A. Site location of field samplers.

1. This Award provides funds for activities related to the Recipient’s BioWatch site location of field collectors/samplers as of the Budget Period start date of this Award.
2. Prior DHS written concurrence is required for any new, deleted, or relocated site locations of the BioWatch collectors/samplers. If DHS non-concurs, DHS will provide expert technical assistance in the development and/or revision of the site locations based on population coverage.
3. Site locations lists or requests for new, deleted, or relocated site locations shall be transmitted via password protected or encrypted e-mail to the DHS Program Officer,

(b) (6)

4. By March 18, 2009, the Recipient must transmit to the DHS the current field deployment plan, any proposed new collector location(s), or a timeline for submission of the proposed new collector location(s), for the DHS' review and approval.

B. Protocols/Procedures.

1. The Recipient will use the current DHS approved BioWatch Standard Operating Procedures (SOPs) (BioWatch Field Ops SOP, v1-1b-FINAL, December 2007) for conducting field to ensure the integrity of the sample collection and delivery to the laboratory facility.
2. Any and all deviations from these procedures must be approved in advance by the DHS Program Officer.
3. This document may be updated during the Performance Period and/or Budget Period. When this occurs, the Recipient will be notified by the DHS Grants Officer 60 days prior to the effective date of the implementation.
4. The Recipient is encouraged to provide feedback concerning the protocols/procedures during the implementation of this project. Feedback should be provided to the DHS Program Officer.

C. Transport of Exposed Filter Holders.

The Recipient must transport samples and filter holders back to the designated Laboratory Response Network (LRN) laboratory office by a mutually agreed upon time between the affected LRN laboratory manager and the field operations program manager.

D. Surge Sampling.

1. In the event of elevated threat or in specific instances, DHS may direct the Recipient to perform supplemental sampling for biological agents (e.g., twice daily sampling or sampling at locations not routinely serviced). Estimated costs associated with this increased activity must be reported to the DHS Program Officer within two (2) business days.
2. The Recipient is not precluded from conducting sampling outside the DHS approved BioWatch site locations. However, costs incurred or maintenance required as a result of the sampling conducted at locations not approved by DHS shall not be charged to this Award.

E. Equipment.

1. The Recipient must inform the DHS Program Officer within 48 hours by e-mail or other written correspondence as soon as Recipient obtains knowledge of any of the following

conditions: 1) sampler failures or downtimes; 2) samplers removed from DHS approved sites; 3) samplers placed into service at new DHS approved sites; and 4) intelligence or other information about sampler placement that would facilitate the effectiveness of this BioWatch program.

2. Each award Recipient must use the types of BioWatch aerosol samplers, component parts, and associated audit devices approved on the DHS BioWatch Portal.
3. Prior to the purchase of equipment in the amount of \$5,000 or more per unit cost, the Recipient must obtain the written approval from DHS.
4. Maintenance and insurance of the equipment will be the responsibility of the Recipient.
5. Title of equipment will remain with the Recipient until closeout when disposition will be provided in writing by DHS within 120 days of submission of final reports.

ARTICLE VI – SUPPLANTING OF FUNDS

Funds approved under this Award shall be used to supplement and shall not be used to supplant State or local funds dedicated to this effort.

ARTICLE VII – DHS INVOLVEMENT

- A. DHS will provide technical guidance collaborating with the Recipient on BioWatch program operations, including the technologies being evaluated in the program, budget issues, Recipient's security procedures, network design, and sampler siting.
- B. DHS will review and provide a final determination for changes requested in collector network design and location sites.
- C. DHS will provide national guidance for notification protocols and post-BioWatch Actionable Result (BAR) activities.
- D. DHS will notify the Recipient when special event monitoring and/or increased sampling is required for periods of elevated security threat (see Article V.D.1, Program Terms and Conditions, Surge Sampling).
- E. DHS will review and approve publications developed under this project for technical accuracy and appropriateness of security sensitive dissemination prior to submission for publication.
- F. DHS will provide the Recipient the opportunity to comment on any proposed changes to the SOP (identified in Article V.B.1, Program Terms and Conditions, Protocols/Procedures,

above). If this document is revised, the Recipient will be notified by the DHS Grants Officer 60 days prior to the effective date of the implementation.

ARTICLE VIII – PAYMENT

The Recipient shall be paid in advance using the U.S. Department of Health and Human Service/Payment Management System (SMARTLINK), provided it maintains or demonstrates the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds from the DHS and expenditure disbursement by the Recipient. When these requirements are not met, the Recipient will be reimbursed on a costs incurred basis.

Overpayment of funds must be coordinated with the U.S. Department of Health and Human Services/Payment Management System

ARTICLE IX – FINANCIAL REPORTS

- A. Financial Status Report. The Recipient shall submit financial reports, SF 269, Financial Status Report (FSR), to the DHS Grants Officer within 30 days after the end of each calendar quarter. Reports are due October 30, January 30, April 30, and July 30. Electronic submissions should be sent to DHS-GrantReports@dhs.gov.
- B. Federal Cash Transaction Report. The Recipient shall submit the SF 272, Cash Transaction Report to the Payment Management System, U.S. Department of Health and Human Services (HHS). The reports are due November 14, February 14, August 14, and May 14.
- C. Final Financial Status Report. The Recipient shall submit the Final Financial Status Report to the DHS Grants Officer within 90 days after the expiration date of the Performance Period. Electronic submissions should be sent to DHS-GrantReports@dhs.gov.

ARTICLE X – PERFORMANCE REPORTS

- A. Quarterly Performance Reports. The Recipient shall submit performance reports to the DHS Grants Officer. Electronic submissions should be sent to DHS-GrantReports@dhs.gov.
 - 1. Performance reports are due within 30 days after the end of each calendar quarter. Reports are due January 30, April 30, July 30, and October 30.
 - 2. Performance reports must provide information on the overall progress by quarter. These reports shall include:
 - a. a discussion of problems encountered and proposed resolution;

- b. a comparison of actual accomplishments to the approved project objectives (e.g., staffing levels, site preparation and sampler deployment, equipment purchases);
 - c. percentage of funds expended for the quarter relative to the total budget of this award for Personnel, Travel, Equipment, Supplies, and Contracts;
 - d. the identity of which types of BioWatch samplers are in operation for each quarter, and how many of each type of samplers are currently held in inventory but not operational;
 - e. the performance of the existing sampling system;
 - f. newly introduced DHS approved technologies (e.g., new sample management system (software or hardware technology), or a new filter-based sampler, or a new real-time biological agent analyzer);
 - g. documentation of Quarterly Leak Check, Flowrate Verification, and Timer checks for each collector as outlined in the DHS SOP; and
 - h. BioWatch Advisory Committee observed lessons learned and best practices from state and locals involved in the program should be included in the report, as well as information concerning developments within the locale on the operations conducted within the quarter and, where available, information on special events or surge monitoring conducted during the quarter, information on interactions with the BioWatch Program staff, and expectations for how field operations will proceed for the next quarter.
- B. Final Performance Report. The Recipient shall submit the Final Performance Report to the DHS Grants Officer within 90 days after the expiration date of the Performance Period. This final report shall include the same information as the quarterly performance reports. Electronic submissions should be sent to DHS-GrantReports@dhs.gov.

ARTICLE XI – INVENTORY REPORTS

- A. The Recipient shall submit an equipment inventory report annually to the DHS Grants Officer within 90 days after the end of the Budget Period. Electronic submissions should be sent to DHS-GrantReports@dhs.gov.
- B. The inventory report shall include a description of the property; manufacturer model number, serial number or other identification number; the source of property; name on title; acquisition date; and cost of the unit; the address of use; operational condition of the property; and, disposition data, if applicable.

ARTICLE XII — AMENDMENTS AND REVISIONS**A. Budget Revisions.**

1. Transfers of funds between direct cost categories in the approved budget when such cumulative transfers among those direct cost categories exceed ten percent must be approved in writing by the DHS Grants Officer prior to execution.
2. The Recipient shall obtain prior written approval for any budget revision, which would result in the need for additional funds unless Paragraph 3 applies.
3. If supplemental funding is necessary due to surge sampling (see Article V.D.1, Program Terms and Conditions, Surge Sampling), the Recipient shall submit a request within seven (7) business days after the surge sampling or the request from DHS for increased sampling.
4. If the Recipient has unexpended funds remaining after the end of the Performance Period, the Recipient shall report the amount to the DHS Grants Officer and request deobligation instructions.

B. Extension Request.

1. Extensions to the Performance Period can only be authorized in writing by the DHS Grants Officer.
2. Requests for time extensions to the Performance Period will be considered but will not be granted automatically and must be supported by adequate justification to be approved or disapproved. The justification is a written explanation of the reason or reasons for the delay; an outline of remaining funds available to support the extended Performance Period; and a description of performance measures necessary to complete the project. Without performance and financial status reports current and justification submitted, extension requests shall not be processed.
3. DHS has no obligation to provide additional funding as a result of an extension.

ARTICLE XIII – DEPARTMENT OF HOMELAND SECURITY OFFICIALS

DHS officials for the Award are as follows:

- A. The DHS Program Officer shall be the DHS staff member responsible for monitoring the completion of work and technical performance of the projects or activities described in the application under the Program Narrative Statement. The Program Officer and contact information is listed below:

(b) (6)
OHA/CMO Stop 0315
US Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528-0315
Phone: (b) (6)
Alternate Phone: (b) (6)
Email: (b) (6)

- B. The DHS Grants Officer is the DHS official that has the full authority to negotiate, administer and execute all terms and conditions of the Award in concurrence with the Program Officer. The Grants Officer and contact information is listed below:

(b) (6)
MGMT OPO Stop 0115
Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528-0115
Phone: (b) (6)
Email: (b) (6)

- C. The Regulatory Compliance Officer is the DHS official responsible for overseeing the DHS Regulatory Compliance Office (RCO) and implementing procedures to ensure that the Recipient of this award complies with federal regulations and DHS policies for the protection of human subjects, animal care and use, biosafety and select agent security.

(b) (6)
Attorney Advisor and Regulatory & Treaty Compliance Assurance Program Manager
OGC Stop 0485
Department of Homeland Security
Washington, D.C. 20528-0485
Phone: (b) (6)
email: (b) (6)

The RCO shall collect relevant documentation pertaining to this award on behalf of the Regulatory Compliance Officer. Specific RCO points of contact for documentation submissions and inquiries are provided in the Terms and Conditions below.

ARTICLE XIV – GENERAL TERMS AND CONDITIONS

The general terms and conditions of the Award are as follows:

- A. Cargo Preference. The Recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46

CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this Grant, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.

- B. Contract Provisions. All contracts executed under this Award will contain the contract provisions listed under 44 CFR Part 13, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- C. Environmental Standards. By accepting funds under this Award, the Recipient assures that it will:
1. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 comp., p. 799] and Environmental Protection Agency (EPA) rules at 40 CFR Part 15. In accordance with the EPA rules, the Recipient further agrees that it will:
 - a. Not use any facility on the EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR 15.5 (awards of less than \$100,000, and certain other awards, exempt from the EPA regulations), as long as the facility remains on the list.
 - b. Notify the DHS Grants Officer if it intends to use a facility in performing this grant that is on the List of Violating Facilities or that the Recipient knows has been recommended to be placed on the List of Violating Facilities.
 2. Identify to the DHS Grants Officer any impact this grant may have on:
 - a. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the Recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.
 - b. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et seq.), concerning preservation of barrier resources.
 - c. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
- D. Fly America Act. Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds under this Grant shall use U.S.-flag air carriers (air carriers holding

certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

E. Use of DHS Seal and Non-Endorsement. The Recipient shall obtain DHS' approval prior to using the DHS seal. DHS' funding of this Award does not equate to DHS' endorsement of such projects.

F. Biosafety and Select Agent Security.

Laboratory research must be conducted in compliance with DHS Management Directive (MD) 10101, "Biosafety," the latest edition of CDC/NIH Biosafety in Microbiological and Biomedical Laboratories ("BMBL"), NIH Guidelines for Research Involving Recombinant DNA Molecules ("NIH Guidelines"), and other applicable standards and guidelines pertaining to laboratory biosafety.

For each research project involving recombinant DNA (as defined in the NIH Guidelines), the Recipient must submit documentation of protocol approval by an appropriately constituted Institutional Biosafety Committee ("IBC"). The RCO will retain this documentation and will also verify that the designated IBC is registered with the NIH Office of Biotechnology Activities.

For work involving Biological Select Agents and Toxins ("BSAT"), the Recipient (and any constituent laboratories) will comply with applicable Federal laws and regulations and DHS policies pertaining to the possession and use of BSAT including, but not limited to, 42 CFR 73 "Select Agents and Toxins", 7 CFR 331 "Possession, Use, and Transfer of Select Agents and Toxins", 9 CFR 121 "Possession, Use, and Transfer of Select Agents and Toxins", Public Law 107-56, "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001", Public Law 107-188 "Public Health Security and Bioterrorism Preparedness and Response Act of 2002", and DHS MD 10102 "Select Agent and Toxin Security". If the Recipient will conduct research involving BSATs (see the HHS and USDA Select Agents and Toxins List, <http://www.cdc.gov/od/sap/docs/salist.pdf>) the Recipient must complete registration with CDC (or USDA, depending on the agent) before using DHS funds. No DHS funds can be used for activities involving BSAT if the final registration certificate is denied. The Recipient will provide the DHS Grants Officer copies of its Select Agent Registrations and other documentation to demonstrate compliance with these requirements and will also immediately report the DHS Grants Officer any instances of non-compliance. Additionally, before initiation of such activities, the Recipient must submit a copy of the following documents for RCO review:

- Current CDC/APHIS Certificate of Registration
- Most recent annual program review and facility inspection report

- Most recent CDC/APHIS inspection report (if applicable)
- All CDC/APHIS Form 3 documents (Reports of BSAT Theft, Loss, or Release)

These records should be submitted to the RCO at regulatorycompliance@dhs.gov. Any questions or concerns regarding these submissions should be directed to (b) (6) at

(b) (6)

The documentation will be retained by the RCO and used to conduct a regulatory compliance assessment. Additional documentation may be required in some cases to complete this assessment. The recipient must provide this documentation upon request and address in writing all regulatory concerns raised by the RCO before a letter of certification is issued. Research involving BSATs must not begin under this Award without first obtaining an RCO certification letter.

The recipient must submit annual updates to the RCO, to include annual facility inspection reports and any relevant changes to, expiration of, or renewal of CDC/APHIS certificate of registration. Recipient must promptly report the following to the RCO, along with all corrective actions taken: any serious or continuing noncompliance with HHS/USDA regulations regarding BSAT, any suspension or revocation of CDC/APHIS certificate of registration, and any instances of theft, loss, or release of select agents or toxins.

- G. National Incident Management System (NIMS). Each state is coordinating the implementation of NIMS and can provide assistance and guidance to local jurisdictions. The Recipient should contact the State Administrative Agency responsible for homeland security for information about how NIMS is being implemented in the Recipient's state. Further information on compliance and guidance is provided as Attachment A to this Award.
- H. Copyright. The Recipient may publish, or otherwise exercise copyright in, any work first produced under this Agreement unless the work includes any information that is otherwise controlled by the Government (e.g. classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyrighted work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the Recipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including award number) to any work first produced under this Agreement.
- I. Patent Rights and Data Rights.
1. Patent rights.

The Recipient is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements." The clause at 37 CFR 401.14 is incorporated by this reference herein. All reports of subject inventions made under this Award should be submitted to DHS using the Interagency Edison system website at <https://www.iedison.gov>

2. Data rights.

a. General Requirements. The Recipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in:

- (1) Any data that is first produced under this Award and provided to the Government;
- (2) Any data owned by third parties that is incorporated in data provided to the Government under this Award; or
- (3) Any data requested in paragraph b below, if incorporated in this Award.

"Data" means recorded information, regardless of form or the media on which it may be recorded.

b. Additional requirement for this Award.

- (1) Requirement. If the Government believes that it needs additional data that was produced under this Award, the Government may request the data and the Recipient agrees to provide the data within a reasonable time.
- (2) Applicability. The requirement in paragraph 2.a of this section applies to any data that are:
 - (a) Produced under this Award, either as a Recipient or sub-recipient;
 - (b) Used by the Government in developing an agency action that has the force and effect of law; and
 - (c) Published, which occurs either when:
 - i. The data is published in a peer-reviewed scientific or technical journal; or
 - ii. DHS publicly and officially cites the data in support of an agency action

that has the force and effect of law.

(d) Definition of “research data.” For the purposes of this section, “research data:”

i. Means the recorded factual material (excluding physical objects, such as laboratory samples) commonly accepted in the scientific community as necessary to validate research findings.

ii. Excludes:

(A) Preliminary analyses;

(B) Drafts of scientific papers;

(C) Plans for future research;

(D) Peer reviews;

(E) Communications with colleagues;

(F) Trade Secrets

(G) Commercial information;

(H) Materials necessary that a research must hold confidential until they are published, or similar information which protected under law; and

(I) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

3. Requirements for subawards. The Recipient agrees to include in any subaward made under this Agreement the requirements of this paragraph I (Patent Rights and Data Rights) and Paragraph H (Copyright).

J. Program Income. Program income is income earned as a result of Recipient or sub-Recipient grant-supported activity, or earned as a result of the Award during the Period of Performance. Program income shall be deducted from the award of funds under this grant. The Recipient shall submit a written list of expanded activities to be accomplished as a result of the Program Income funds. The list shall be submitted to the DHS Grants Officer for review and the approval within 30 days of receipt of program income.

K. Publications. All publications produced as a result of this funding which are submitted for publication in any magazine, journal, or trade paper shall carry the following:

1. Acknowledgement. “This material is based upon work supported by the U.S. Department of Homeland Security under Award Number 2009-OHA-091-000027.”

2. Disclaimer. “The views and conclusions contained in this document are those of the authors and should not be interpreted as necessarily representing the official policies, either expressed or implied, of the U.S. Department of Homeland Security.”

Recipient agrees to include in any subaward made under this Agreement the requirements of this Paragraph K (Publications).

- L. Refunds. The Recipient shall transfer to DHS the appropriate share, based on the Federal support percentage, of any refund, rebate, credit or other amounts arising from performance of this grant, along with accrued interest, if any. The Recipient shall take necessary action to effect prompt collection of all monies due or which may become due and to cooperate with the DHS in any claim or suit in connection with amounts due.
- M. Security Requirements.
1. Definitions. For purposes of this Section, *Sensitive Information* means any information, the loss, misuse, disclosure, or unauthorized access to or modification of which could adversely affect the national or homeland security interest, or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:
 - a. Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, and any supplementary guidance officially communicated in writing by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);
 - b. Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and
 - c. Any information that is designated in writing as "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.
 2. Security Requirements. The Recipient and sub-Recipients of this award shall use their own security procedures and protections to protect Sensitive Information developed, generated, or distributed under this award. Such security procedures should include procedures (e.g., security check forms, type of background check/investigations performed and requirements for successful adjudication of the type of background check/investigations performed) to determine the suitability of employees of the Recipient and sub-Recipients' employees requiring recurring access to government facilities or access to Sensitive Information provided under or generated under this award.

A copy of the security procedures and any proposed Non-Disclosure Agreement for employees or sub-Recipients shall be submitted within three (3) weeks after the Budget Period start date. The Recipient will be notified of any concerns that may be identified once the security procedures are reviewed by DHS. The Recipient shall transmit their security procedures to the DHS Grants Officer via password protected or encrypted e-mail to: dhs-biowatch@dhs.gov.

3. Sensitive Information. Work under this Award may involve access to Sensitive Information from the Federal Government. Therefore, the Recipient shall not disclose, orally or in writing, any Sensitive Information to any person unless authorized in writing by the Grants Officer. Further, the Recipient shall ensure that Sensitive Information is protected in such a manner that it is safeguarded from public disclosure in compliance with local, state or Federal laws and with Recipient's and/or sub-Recipient's security procedures. If the Recipient and/or sub-Recipient receives a request for release of Sensitive Information pursuant to a state's freedom of information act law (e.g., state sunshine law), the Recipient and/or sub-Recipient shall notify the Grants Officer in writing prior to releasing any such Sensitive Information. As a general matter, Sensitive Information that is not protected pursuant to Federal law or regulation may be subject to release under a state's freedom of information act law. For those Recipient or sub-Recipient employees authorized access to Sensitive Information, the Recipient must ensure that these persons receive training concerning the protection and disclosure of Sensitive Information both during and after the period of performance.
4. Public Dissemination of Sensitive Information. Sensitive Information generated or received as a result of this Award presented by employees or sub-recipients of the award in workshops, conferences, seminars or other public venue shall be submitted to and approved in writing by DHS 90 days prior to the event.
5. Security Concerns/Violations. The Recipient shall inform the DHS Grants Officer in writing within three (3) days of the Recipient being made aware of any security concerns with individuals having recurring access to government facilities or Sensitive Information.

In the event that Sensitive Information is divulged in violation of Recipient's security procedures, the Recipient will immediately notify the DHS Grants Officer of the same and take appropriate law enforcement and legal action.

6. Flow-through Requirements. The Recipient shall include the substance of this clause in all sub-awards/contracts at any tier where the sub-Recipient may have access to government facilities and Sensitive Information.
- N. Site Visits. DHS, through authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by DHS on the premises of the Recipient, or a contractor under a Cooperative Agreement/Grant, the

Recipient shall provide and shall require its contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay the work.

- O. Termination. Either the Recipient or DHS may terminate this Award by giving written notice to the other party at least thirty (30) calendar days prior to the effective date of the termination. All notices are to be transmitted via registered or certified mail, return receipt requested. The Recipient's authority to incur new costs will be terminated upon arrival of the date of receipt of the letter or the date set forth in the notice. Any costs incurred up to the earlier of the date of the receipt of the notice or the date of termination set forth in the notice will be negotiated for final payment. Closeout of this Award will be commenced and processed as under 44 CFR Part 13.
- P. Modification. The only method by which this Award can be modified is by the DHS Grants Officer identified in this Award or his or her designee. No other communications, whether oral or in writing, shall modify this Award.
- Q. Travel. Travel required in the performance of the duties approved in the grant must comply with the applicable OMB Cost Principles Circular. Foreign travel is not included in this award.
- R. Trafficking in Persons.
1. Provisions applicable to a Recipient that is a private entity.
 - a. The Recipient, Recipient's employees, subrecipients under this Award, and subrecipients' employees may not—
 - (1) Engage in severe forms of trafficking in persons during the period of time that this Award is in effect;
 - (2) Procure a commercial sex act during the period of time that this Award is in effect; or
 - (3) Use forced labor in the performance of this Award or subawards under this Award.
 - b. DHS may unilaterally terminate this Award, without penalty, if the Recipient or a subrecipient that is a private entity—
 - (1) Is determined to have violated a prohibition in paragraph 1.a. of this Award term; or
 - (2) Has an employee who is determined by DHS to have violated a prohibition in

paragraph 1.a of this Award term through conduct that is either—

- (a) Associated with performance under this Award; or
 - (b) Imputed to the Recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).”
2. Provision applicable to a Recipient other than a private entity. DHS may unilaterally terminate this Award, without penalty, if a subrecipient that is a private entity—
- a. Is determined to have violated an applicable prohibition in paragraph 1.a of this Award term; or
 - b. Has an employee who is determined by DHS to have violated an applicable prohibition in paragraph 1.a of this Award term through conduct that is either—
 - (1) Associated with performance under this Award; or
 - (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).”
3. Provisions applicable to any Recipient.
- a. The Recipient and subrecipient must inform DHS immediately of any information the Recipient or subrecipient receives from any source alleging a violation of a prohibition in paragraph 1.a of this Award term.
 - b. DHS’ right to terminate unilaterally that is described in paragraph 1.b or 2 of this section:
 - (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (2) Is in addition to all other remedies for noncompliance that are available to us under this Award.
 - c. The Recipient must include the requirements of paragraph 1.a of this Award term in any subaward the Recipient makes to a private entity
4. Definitions. For purposes of this Award term:

- a. "Employee" means either:
 - (1) An individual employed by the Recipient or a subrecipient who is engaged in the performance of the project or program under this Award; or
 - (2) Another person engaged in the performance of the project or program under this Award and not compensated by the Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - b. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - c. "Private entity:"
 - (1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - (2) Includes:
 - (a) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - (b) A for-profit organization.
 - d. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).
- S. Acceptance of Award. The Recipient's drawing or requesting funds from the U.S. Department of Health and Human Services/Payment Management System (SMARTLINK) indicates acceptance of this Award and its associated terms and conditions. If the Recipient cannot accept this Award, including the legal obligation to perform in accordance with its provisions, the Recipient should notify the DHS Grants Officer immediately upon receipt of this Award. If resolution cannot be reached, the DHS Grants Officer will void the grant.
- T. Access to Records. The Recipient shall retain financial records, supporting documents, statistical records, and all other records pertinent to this Award for a period of three years from the date of submission of the final expenditure report. The only exceptions to the aforementioned record retention requirements are the following:

1. If any litigation, dispute, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, dispute or audit findings involving the records have been resolved and final action taken.
2. Records for real property and equipment acquired with Federal funds shall be retained for three (3) years after final disposition.
3. The DHS Grants Officer may direct the Recipient to transfer certain records to DHS custody when he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the DHS Grants Officer may make arrangements for the Recipient to retain any records that are continuously needed for joint use.

DHS, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of the Recipient that are pertinent to this Award, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to Recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

With respect to subrecipients, DHS shall retain the right to conduct a financial review, require an audit, or otherwise ensure adequate accountability of organizations expending DHS funds. Recipient agrees to include in any subaward made under this Agreement the requirements of this Paragraph T (Access to Records).

- U. Controlled Unclassified Information. The parties understand that information and materials provided pursuant to or resulting from this Award may be export controlled, sensitive, for official use only, or otherwise protected by law, executive order or regulation. The Recipient is responsible for compliance with all applicable laws and regulations. Nothing in this Award shall be construed to permit any disclosure in violation of those restrictions.

ARTICLE XV – NONDISCRIMINATION

- A. This Award and any program assisted thereby are subject to the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the regulations issued pursuant thereto and the Assurance of Compliance which the Recipient has filed with DHS. No person on the basis of race, color, national origin, or handicap shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under the award. In addition, if the project involves an education activity or program, as defined by Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1686), no person on the basis of sex shall be excluded from participation in the project. Further, by acceptance of the award, the Recipient assures the DHS that it will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

794) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213). Accordingly, this award is subject to the following:

- TITLE VI OF THE CIVIL RIGHTS ACT OF 1964. As amended, provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. Title VI also extends protection to persons with limited English proficiency. (42 U.S.C. 2000d et seq.)
- TITLE IX OF THE EDUCATION AMENDMENTS OF 1972. Provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance. (20 U.S.C. 1681 et seq.)
- THE AGE DISCRIMINATION ACT OF 1975. Provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (42 U.S.C. 6101 et seq.)
- SECTION 504 OF THE REHABILITATION ACT OF 1973. Provides that no otherwise qualified individual with a disability in the United States, shall, solely by reason of his/her disability, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (29 U.S.C. 794)
- THE AMERICANS WITH DISABILITIES ACT OF 1990 (“ADA”). Prohibits discrimination on the basis of disability in employment (Title I), state and local government services (Title II), places of public accommodation and commercial facilities (Title III). (42 U.S.C. 12101-12213).

B. The Recipient shall obtain from each organization that applies to be or serves as a sub-Recipient or subcontractor under the award (for other than the provision of commercially available supplies, materials, equipment or general support services) an Assurance of Compliance with Title VI of the Civil Rights Act of 1964. Civil Rights Act assurances may be filed with the Recipient in one of two ways:

1. By written notification that the appropriate Assurance of Compliance form has been executed and filed either with DHS or the U.S. Department of Health and Human Services; or
2. The Recipient shall obtain assurances pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, from subRecipients by incorporating into the subagreement a provision that acceptance of the subagreement constitutes assurance.

- C. The Recipient agrees to comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101 et. seq.) as implemented by the Department of Health and Human Service regulations at 45 CFR 90. In the event the Recipient passes on DHS financial assistance to subRecipients, this provision shall apply to the subRecipients, and the instrument under which the Federal financial assistance is passed to the subRecipient shall contain a provision identical to this provision.

ARTICLE XVI– AUDIT REQUIREMENTS

The Recipient must follow the audit requirements under OMB Circular No. A-133, Audits for States, Local Governments and Non-Profit Organizations. Non-Federal entities that expend \$500,000 or more of Federal funds in their fiscal year shall have a single or program-specific audit conducted for that year in accordance with the provisions of A-133.

ARTICLE XVII – GOVERNING PROVISIONS

This Award is subject to applicable laws and regulations of the United States that apply to assistance instruments. The following are hereby incorporated into this Award by this reference:

31 CFR 205	Rules and Procedures for Funds Transfers
44 CFR Part 13	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
OMB Circular A-87 (relocated to 2 CFR 225)	Cost Principles for State, Local, and Indian Tribal Governments
OMB Circular A-133	Audits of States, Local Governments, and Non-Profit Organizations
Application	Grant Application, Assurances, and Program Narrative Statement dated January 6, 2009, revised January 29, 2009.

ARTICLE XVIII – ORDER OF PRECEDENCE

- A. 44 CFR Part 13, “Uniform Administrative Requirements for State, Local and Indian Tribal Governments.”
- B. The OMB Circulars: OMB Circular A-87 (relocated to 2 CFR 225) “Cost Principles for State, Local, and Indian Tribal Governments”; OMB Circular A-133 “Audits of States, Local Governments, and Non-Profit Organizations.”

- C. The terms and conditions of this Award.
- D. The Funding Opportunity, DHS-09-OHA-091-001.
- E. Application and Assurances dated January 6, 2009, revised January 29, 2009.

(b) (6)

(b) (6)

Grants and Financial Assistance Division
Office of Procurement Operations
Office of the Chief Procurement Officer
Department of Homeland Security

(b) (6)

Date

Attachment A**National Incident Management System (NIMS)**

Hurricane Katrina was a stark reminder of how critical it is for our nation to approach incident management in a coordinated, consistent, and efficient manner. We must be able to come together, at all levels of government, to prevent, prepare for, respond to, and recover from any emergency or disaster. Our operations must be seamless and based on common incident management doctrine, because the challenges we face as a nation are far greater than the capabilities of any one jurisdiction. The National Incident Management System (NIMS) is our nation's incident management system, and recent events have taught us that full implementation of NIMS among all jurisdictions and all levels of government is must be achieved as quickly as possible.

Homeland Security Presidential Directive 5 "Management of Domestic Incidents" requires that all Federal preparedness assistance funding for states, territories and local jurisdictions, as well as tribal entities, be dependent on NIMS compliance. In October 2005, Secretary Chertoff wrote to every Governor with the actions that States, territories, local jurisdictions and tribal entities must take to implement the NIMS this year. State and local government jurisdictions and tribal entities will only be eligible to receive future federal preparedness funding if they implement the NIMS as required this year.

The successful implementation of the NIMS depends on the participation and integration of all state, territorial and community-based organizations, including public, non-governmental, and private organizations that may have a role in preventing, preparing for, responding to, or recovering from an incident.

For More Information:

Each state is coordinating the implementation of NIMS and can provide assistance and guidance to local jurisdictions. You should contact the State Administrative Agency responsible for homeland security in your state for more information about how NIMS is being implemented in your state.

For additional information about the NIMS, you may also contact the Department of Homeland Security's NIMS Integration Center

NIMS Integration Center
DHS/FEMA
500 C Street, SW
Washington DC 20472
(202) 646-3850
NIMS-Integration-Center@dhs.gov

or go to the NIMS Integration Center website: <http://www.fema.gov/emergency/nims/index.shtml>

FEMA's Emergency Management Institute has developed an online, independent study course on NIMS. Independent Study (IS) 700: NIMS, An Introduction, is available at <http://training.fema.gov/IS/>.