

AGREEMENT

between

CUYAHOGA COUNTY

and

STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES

for

FY08 Urban Area Security Initiative

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the County of Cuyahoga, Ohio (the "COUNTY"), and STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES, a state agency, with principal offices located at 30 East Broad Street, Columbus, Ohio 43215 (the "STATE").

WHEREAS, pursuant to Resolution No. 092266 duly adopted on May 28, 2009, by the COUNTY approving the FY 2008 Urban Area Security Initiative (hereinafter called "FY08 UASI"); and

WHEREAS the purpose of this AGREEMENT is to coordinate and identify activities, procurement, and services utilizing grant funds received by the COUNTY as they pertain to the FY08 UASI; and

WHEREAS, pursuant to Section 125.18(F) of the Ohio Revised Code, the Ohio Department of Administrative Services, Office of Information Technology, may establish cooperative agreements with federal and local government agencies that are not under the authority of the governor for the provision of technology services and the development of technology projects; and

WHEREAS the FY08 UASI grant funds were awarded to the COUNTY, for the COUNTY, and on behalf of the municipalities and other permissible agencies in Cuyahoga County, for the building and/or completion of tower sites at I90 and Columbia, 480 and Stearns, and Chagrin Falls (hereinafter referred to as the PROJECT), however, the COUNTY can not complete the PROJECT in the time frame provided by the grant and the STATE is willing to act as the project manager for the above-referenced PROJECT in order to meet the August 31, 2011 deadline for this PROJECT; and

WHEREAS, the following documents consisting of Attachments I and II, and Exhibit A, are incorporated herein as part of this AGREEMENT:

- FY08 UASI Award and Guidance (Attachment I)
- Expense Report Form (Exhibit A)
- Scope of Services (Attachment II)

WHEREAS, it is necessary that the COUNTY and STATE enter into an AGREEMENT in order to carry out the coordination and responsibilities of the FY08 UASI grant awards and description of the programs contained in Attachment I;

NOW, THEREFORE, the parties agree as follows:

I. SCOPE OF SERVICE

1.1 The STATE will provide all services and assure adherence to the requirements as set forth in Attachment I during the period from April 12, 2011 through and including August 15, 2011 and Attachment II or as adjusted by approved formal request for a grant period change, program modification or grant extension. Any changes or deviations from the Attachments must be set forth in writing and approved by the COUNTY prior to implementation.

1.2 For the Scope of Service to be satisfied by the STATE, the STATE will seek Controlling Board approval no later than June 6, 2011. To accomplish this, a timely execution of the Sub-Grant Agreement between the COUNTY and the STATE is necessary. A request cannot be made to the Controlling Board until an executed agreement is completed. Approval by the Controlling Board for Funds Appropriation and Waiver of Non-Competitive Selection for Tower Construction shall give authorization for the STATE to request a Purchase Order for the Scope of Service.

II. FUNDING; TERMS AND CONDITIONS OF PAYMENT

2.1 Funding. The total cost for the PROJECT is estimated to be Eight Hundred Sixty-One Thousand, and Seven Dollars and Seventy-Nine Cents (\$861,007.79). The COUNTY shall provide to the STATE 100% percent of the approved eligible costs solely out of grant funds. Unless otherwise provided, funds through the COUNTY shall be applied only to the eligible costs associated with the actual construction of the PROJECT or the installation of equipment for the PROJECT.

2.2 Review of Invoices. As Project Manager, the STATE shall review and approve all invoices from vendors for work performed on the PROJECT. The STATE shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. To assure prompt payment, the acceptance of equipment and the recording for payment will be performed on a daily basis as the items of work are installed and accepted. The UASI grant expires on August 31, 2011 so all invoices must be submitted to the COUNTY no later than August 8, 2011.

2.3 Payment. The STATE will submit to the COUNTY written requests for payment of the Federal expenses involved, attaching copies of invoices signed by the STATE indicating approval and acceptance of goods and copies of all source documentation associated with pending invoices. The COUNTY shall pay the STATE the eligible items of expense in accordance with the Scope of Services. In no event shall any expenditure by the STATE be paid unless said expenditure is included in the schedule of expenses

and proper documentation submitted by the STATE and approved by the COUNTY. The COUNTY shall pay the STATE within thirty (30) days of receipt of the approved vendor's invoice from the STATE and the STATE will, upon receipt of the funds from the COUNTY, pay the vendor's invoice. Once the STATE has issued payment to the vendor, the STATE shall submit documentation to the COUNTY to indicate payment has been made to the vendor. Such documentation may be submitted in electronic format to the COUNTY.

2.4 Mechanics' Liens. The STATE shall notify the COUNTY of the filing of any mechanic's liens against the STATE's vendor within three (3) business days of receipt of notice of lien. Upon the receipt of notice of a mechanic's lien, the COUNTY reserves the right to withhold an amount of money equal to the amount of the lien that may be due and owing to either DAS or the vendor until such time as the lien is resolved.

2.5 Payment to the STATE shall be submitted to:

State of Ohio, Department of Administrative Services
Office of Information Technology, Business Office
Room 4060
30 East Broad Street, 39th Floor
Columbus, Ohio 43215

III. PROJECT DEVELOPMENT

3.1 The COUNTY and the STATE agree that the STATE shall administer this PROJECT, including but not limited to, the preparation of bid specifications, the award of contracts to qualified vendors, construction and installation management, and the purchase of required equipment in accordance with the Scope of Services.

3.2 The STATE agrees that it shall comply with all special and standard grant conditions set forth in the attached Scope of Services and ensure that all equipment purchases are pre-approved by OEMA and procures, delivered, installed and tagged with the "Purchased with U.S. Dept. of Homeland Security" labels. The COUNTY shall ensure that such equipment is entered into the COUNTY's Homeland Security Asset Tracking Database by the termination of this Agreement.

3.3 The STATE agrees to comply with Senate Bill 9 (Ohio's Homeland Security and anti-terrorism legislation) and with House Bill 694 and all applicable Buy American (41 USC 10a, et seq) and Buy Ohio requirements.

3.4 In the administration of this PROJECT, the COUNTY shall be responsible for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessments, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, and for securing all necessary permits.

3.5 The COUNTY shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.

3.6 The STATE will coordinate all right-of-way activities and shall work with property owners to secure the appropriate permits and licenses to install the equipment and buildings required for the PROJECT.

IV. AUDITS

4.1 Access to records. To the extent permitted by law, the COUNTY and the State of Ohio Emergency Management Agency authorized representatives, shall have access during business hours for the purpose of audit and examination of any books, papers, program site, staff, clients, and records of the STATE that are pertinent to the subject grant. The COUNTY shall provide the STATE with two (2) days advance written notice of intent to audit.

4.2 Final Audit. Final audit of the STATE shall be made by the Auditor of the State in accordance with standard time schedules. The STATE agrees to cooperate with Federal, State, and local auditing requirements and comply with standards, procedures, and reasonable schedules whether the audit be general, full-scope, financial, compliance, performance, total entity, or other, in accordance with Federal GAO reporting standards, Grant Conditions GA-110-SC-85, JA/JJ 110-SC-75-1, and the applicable requirements of Federal OMB circulars A-102, A-110, A-128, A-122, A-124, A-133, A-87, A-88, A-21, and A-27. The COUNTY shall provide the STATE with two (2) days advance written notice of intent to audit.

4.3 In the event of a state and/or federal audit of COUNTY records concerning this grant project, the COUNTY will provide the STATE with a copy of findings for recovery related to the STATE'S expenditures under this AGREEMENT, so that the STATE shall have an opportunity to submit a written response to said findings.

V. REPORTING REQUIREMENTS

5.1 In order to facilitate compliance with the grant conditions, the STATE shall provide the required reports as indicated and required in Attachment I and Exhibit A to the COUNTY. The COUNTY shall submit a program report to the Department of Homeland Security ("DHS") as required by the grant conditions. The COUNTY shall make available to the STATE a copy of all sections of the program report related to its activities and expenditures under this AGREEMENT.

VI. NOTICES

6.1 Any reports, notices, invoices or communications required in this AGREEMENT shall be sufficient if sent by the parties via United States Mail, postage paid, to the addresses noted below:

COUNTY: Cuyahoga County
Grants and Training/Public Safety Grants Administration
310 Lakeside Avenue, Suite 795-A
Cleveland, Ohio 44113
Attn: Manager

STATE: State of Ohio, Department of Administrative Services
Multi-Agency Radio Communications System:
30 East Broad Street, 39th Floor
Columbus, Ohio 43215
ATTN: Darryl Anderson

Or at such other address as the COUNTY may have designated by the written notice to the STATE.

VII. TERMINATION

7.1 This AGREEMENT shall terminate on the expiration date stated below, provided that termination does not effect the COUNTY'S obligation to pay the STATE for pending purchases or the COUNTY'S obligation to fulfill the COUNTY'S requirements as described in the grant conditions. Either party without cause will not terminate this AGREEMENT.

7.2 In the event the U.S. Department of Homeland Security or Ohio Emergency Management Agency disapprove the grant award, or for any reason reduce or discontinue the grant of funds thereby causing the COUNTY to receive a lesser amount of funds than specified by this AGREEMENT, then the COUNTY reserves the right to reduce or cancel this AGREEMENT and the STATE shall not be obligated to continue with the PROJECT or to reimburse the COUNTY for any expenditures.

7.3 This AGREEMENT may be terminated for failure to meet the terms of this AGREEMENT or the failure of the STATE to meet its service/grant objectives. The COUNTY will notify the STATE in writing when corrective action is required. The STATE will commence the recommended corrective action (s) within 30 days after notice. Failure to commence corrective action may result in a delay in reimbursement and/or the termination of the AGREEMENT.

VIII. TERM

8.1 This AGREEMENT will be effective as of April 12, 2011, and unless sooner terminated for cause, will terminate on August 15, 2011. The current General Assembly of Ohio cannot commit a future General Assembly to an expenditure. Therefore, this Agreement will automatically expire at the end of a current biennium, June 30, 2011. The STATE will renew this Agreement for the next biennium by issuing written notice of renewal no later than June 30, 2011. It is the intent of the parties that this PROJECT be completed and all funds obligated by the COUNTY no later than August 15, 2011.

8.2 This Agreement is subject to the determination by the STATE that sufficient funds have been appropriated by the Ohio General Assembly to the STATE for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If the STATE determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

IX. NON-DISCRIMINATION

9.1 The STATE agrees to provide the program services without discrimination on account of race, sex, color, religion, national origin, age, occupation, physical or mental disability or veteran status, to the extent required by law. The parties agree that discrimination and affirmative action clauses contained in Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor in Title 41, Part 60 or the Code of Federal Regulations, are incorporated into this AGREEMENT to the extent binding upon the STATE.

X. COMPLIANCE WITH THE LAW

10.1 Performance under this AGREEMENT shall be in compliance with all applicable Federal, State and County laws, regulations, circulars, rules, and ordinances.

10.2 This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect.

XI. PROTECTION OF CONFIDENTIAL INFORMATION

11.1 This AGREEMENT including the attachments and exhibits may contain confidential information that should not be disclosed. Any party reviewing requests for information concerning this AGREEMENT under the Ohio Public Records Law or the Freedom of Information Act must consult with the Cuyahoga County Director of Law before releasing or reproducing confidential information. This section is not meant to encourage non-compliance with the Ohio Public Records Law.

XII. MERGER AND MODIFICATION

12.1 This AGREEMENT constitutes the full and complete understanding between the parties concerning the STATE. All prior discussions and understandings between the parties are superseded by this Agreement. This AGREEMENT shall be not be amended except by a written instrument signed by both parties in accordance with law.

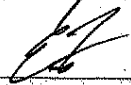
12.2 The parties further agree to include the following language (modified to suit the situation) in all agreements, contracts, amendments to agreements and contracts, requests for proposals, requests for qualifications, notices and instructions to bidders and all applicable procurement documents:

By entering into this AGREEMENT, I agree on behalf of the contracting or submitting business entity, its officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring COUNTY signatures may be executed by electronic means, and that the electronic signatures affixed by the COUNTY to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

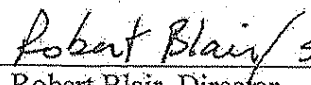
12.3 Signatures: Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

IN WITNESS WHEREOF, the COUNTY and the STATE have executed and delivered this AGREEMENT as of the date first above written.

County of Cuyahoga, Ohio:

By: 
Edward FitzGerald, County Executive

STATE OF OHIO, DEPARTMENT OF ADMINISTRATIVE SERVICES:

By:  sed
Robert Blair, Director