

PORT OF PITTSBURGH
AREA MARITIME SECURITY COMMITTEE (AMSC)
FY2009 PORT SECURITY GRANT PROGRAM
2009-PU-T9-K031
INVESTMENT JUSTIFICATION #IJ 9
SUB-GRANTEE AWARD AGREEMENT
BETWEEN
PORT OF PITTSBURGH COMMISSION
AND
THE CITY OF MORGANTOWN

This agreement, between the Port of Pittsburgh Commission, as Fiduciary Agent (hereinafter referred to the FA) and City of Morgantown (herein referred to as Sub-grantee) June 1, 2009 through the 31 day of May 2013, and will be automatically renewed with any Grant Adjustment Notifications (GAN) extending the expiration date. The Sub-grantee understands and agrees that this grant award shall be subject to and incorporate the following terms and conditions. The Sub-grantee shall include provisions appropriate to effectuate the purposes of those conditions in all contracts of employment, consultant's agreements, and contracts issued under its approved applications.

I. Authority

A. This Agreement is undertaken pursuant to § 46 USC 70107 and the Maritime Transportation Security Act of 2002 to pass through federal preparedness assistance awarded to the Port of Pittsburgh sector area by the Federal Emergency Management Agency (hereinafter FEMA) under the Fiscal Year 2009 Port Security Grant Program.

B. Purpose and Amount of Award: This agreement establishes the terms, conditions, assurances and certifications under which the Fiduciary Agent shall award to the Sub-Grantee an allocation of funds from Fiscal Year 2009 Port Security Grant Program (hereinafter PSGP FY2009), Award Number 2009-PU-T9-K031, in the amount of \$168,175 for Dive Equipment/Side Sonar and ROV in accordance with the Investment Justification (Exhibit A) and Budget (Exhibit B) approved by the Area Maritime Security Committee, which are attached hereto and made a part of this Agreement.

II. Applicable Rules/Regulations

A. Applicability of Federal Regulations and Conditions: The Sub-Grantee must comply with the Office of Management and Budget (OMB) Circulars, as applicable: A-21 Cost of Principles for Educational Institutions; A-87 Cost Principles for State, Local and Indian Tribal Governments; A-122 Cost Principles for Non-Profit Organizations; A-102 Uniform Administrative Requirements for Grants and Agreements with State and Local Governments; A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organization, and 48 C.F.R. Part 31 et. Seq. Contract Cost Principles and Procedures. The Sub-Grantee shall assure that these conditions apply to all recipients of assistance or funds. Copies of these OMB Circulars are available for download on OMB website at www.whitehouse.gov/OMB/grant/index.html.

B. Federal Standard Assurances and Additional Assurances and Certifications: The Sub-grantee agrees to be bound by and/or comply with the Federal Standard Assurances and certifications required by the federal government. These include Assurances – Non-Construction Programs, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements; and Accounting and System and Financial Capability /Questionnaire.

C. Non-Supplanting Stipulation: The Sub-grantee shall not use grant funds to supplant state or local funds or other resources that would otherwise have been made available for this project. Further, if a position created by grant is filled from within, the vacancy created by this action must be filled within 60 days. If the vacancy is not filled within 60 days, the Sub-grantee must stop charging the grant for the new position. Upon filling the vacancy, the Sub-grantee may resume charging for the grant position and must supply the name of the replacement person to the FA.

D. Environmental and Historic Preservation Requirements: Sub-grantee shall comply with applicable Federal, State and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws, including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Sub-grantee to meet Federal, State and local EHP requirements and obtain applicable permits may jeopardize Federal funding. Sub-grantee shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA including, but not limited to communications towers, physical security enhancements, new construction and modifications to buildings that are 50 years old or greater. Sub-grantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground-disturbing activities occur during

project implementation, the Sub-grantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Sub-grantee will immediately cease construction in that area and notify the FA and the appropriate State Historic Preservation Office.

E. Audit: The Sub-grantee agrees to comply with the requirements of OMB Circulars A-133 for States, Local Governments, and Non-Profits or Government Auditing Standards, 1994 Revision for Commercial/For-Profit Organizations as applicable. If the Sub-recipient expends \$500,000 or more of Federal funds during its fiscal year, the sub-recipient must submit an organization-wide financial and compliance report. In addition, the sub-grantee agrees to submit a copy of the project's annual audit (required) to the PPC.

F. Report Requirements: The Sub-grantee agrees to submit, at such times and in such form as may be prescribed, reports as the FA may reasonably require, such as quarterly financial reports (SF-269) no later than the 15th day of January, April, July and October and the Semi-Annual progress reports by the 15th of January and July during each year this Agreement is effective, as well as final financial reports and evaluation reports. The final progress report must be filed with the FA within thirty (30) days after the termination of the last year of the grant award. The FA must receive the final progress report prior to the final cost report being paid.

G. Assign-ability: The Sub-grantee shall not assign any interest in this Agreement and shall not transfer any interest, whether by assignment of novation, without the prior consent of the FA, except as specified herein.

H. Continuation Funding: Sub-grantee understands that the awarding of this grant in no way assures or implies continuation of funding beyond the project duration indicated in this grant award. If a continuation application is approved, federal funds available under the current grant and corresponding cash matching funds must be expended or obligated and documented prior to the implementation of the continuation grant and expenditure of funds.

I. Third Party Participation: No contract or agreement may be entered into by the Sub-grantee for execution of project activities or provision of services to a grant project other than purchase of supplies or standard commercial or maintenance services which are not incorporated in the approved application. Any such arrangements shall provide that the Sub-grantee will retain ultimate control and responsibility for the project and that these conditions shall bind the contractor. In any case, where the Sub-grantee enters into a contract with third parties, and when such contracts are not contrary to law, the FA shall not be obligated or liable for any breach of contract or other actions in law to any party

other than the original Sub-grantee.

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

K. Title to Property: Effective control and accountability must be maintained for all personal property. Sub-grantees must adequately safeguard all such property and must assure that it is used solely for authorized grant purposes. Subject to the obligations and conditions set forth in OMB Circulars A-102 and A-110, title to Non-expendable property acquired in whole or in part with grant funds shall be vested in the Sub-grantee upon termination of the grant. Non-expendable property is defined as any item having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. At the time the final request for payment is submitted, the Sub-grantee must file with the FA a copy of the Property Control Record Form (Exhibit C), listing all such property acquired with grant funds. Sub-grantees should exercise caution in the use, maintenance, protection, and preservation of such property during the period of project use.

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

M. Insurance: Sub-grantee shall carry general liability insurance, commercial property loss and casualty insurance, errors and omissions insurance, professional liability insurance and/or professional liability malpractice insurance sufficient to protect Sub-grantee from any liability arising out of professional obligations performed pursuant to the requirements of this Agreement. Such insurance policies shall name the PPC as an additional insured. If Sub-grantee has claims-made coverage and subsequently changes insurance carriers during the term of this Agreement, it shall obtain from its new carrier errors and omissions insurance, professional liability insurance and/or professional malpractice carrier an endorsement for retroactive coverage. Prior to performing any services under this Agreement and at such times thereafter as the PPC may reasonably

request, Sub-grantee shall provide the FA with current certificates of insurance for all coverage required by the terms of this Agreement, naming the FA as an additional insured.

N. Confidentiality and Non-Disclosure: The Sub-grantee agrees to furnish the FA with certain confidential information relating to the grant award. The FA agrees to review, examine, inspect or obtain such confidential information only for the purposes described herein, and to otherwise hold confidential and proprietary information or trade secrets in trust confidence, except to the extent that information is determined to be a public record of FA under the Pennsylvania Right-to-Know Law. The FA agrees not to disclose any such confidential information to any third party, except to the U.S. Government.

O. Availability of Project Assets: The Sub-grantee agrees, upon written or verbal request by the Captain of the Port of Pittsburgh (COTP) or his designee to make assets, including equipment, materials, studies, reports or other assets or project information available to the United States Coast Guard or Federal, state or local law enforcement agencies in a timely manner.

III. Operational Procedures

A. Project Implementation: Sub-grantee agrees to implement this project within sixty 60 days following the effective date of the grant award, or this Agreement may be to cancellation. Evidence of project implementation is to be reported within the first sixty days.

B. Accounting Requirements: The Sub-grantee agrees to record all project costs, both federal and matching share, following generally accepted fund accounting procedures. A separate account number or cost recording system must separate all project costs from the sub-grantees other or general expenditures. Adequate documentation for all project costs, both federal and matching share must be maintained. Federal share documentation must clearly indicate that the funds expended were the PSGP FY2009 federal funds. Adequate documentation is defined in the PPC Purchasing Process document attached to this Agreement as Exhibit D, which is part of this Agreement.

C. Payment and Utilization of Funds: Funds awarded are to be expended only for purposes and activities covered by the Sub-grantee's Investment Justification and Budget as attached hereto. Project funds (both federal and matching share) may not be expended prior to the grant award start date. Project funds will be made available through a reimbursement procedure as provided by the FA's policy and procedure,

as per Exhibit D. No payment of funds shall be made to Sub-grantee during any period of time within which the Sub-grantee is in default on filing any informational or financial Reports required by the FA. All claims for reimbursement must be accompanied by copies of all supporting documentation (i.e. time sheet, proof of payment Travel vouchers, invoices, etc.) Claims for reimbursement should be submitted as incurred. Payments will be adjusted to correct previous overpayment and disallowances or underpayments resulting from audit.

D. Grant Adjustments: The Sub-Grantee must obtain prior written approval from the AMSC and FEMA for major project changes. These include, but are not limited to: (a) changes of substance in project activities, designs or research plans set forth in the Approved application; (b) changes or deviations which might alter the project scope or intent; (c) changes in the project director and/or key professional personnel identified in the approved application; (d) changes in the approved budget with exception of those changes permitted in accordance with provisions cited later in this section, and (e) change in the length of the grant period. Equipment not included in the approved Budget may deviate from quantities of equipment in the approved budget as long as the total dollar amount of the equipment budgeted is not exceeded, provided written notification is submitted to the FA. Both the FA and the Sub-grantee shall maintain this notification in the project file. Sub-grantees may not add to the specified equipment without prior approval of FEMA unless the total dollar amount of the equipment is budgeted.

E. Procurement Standards, Procedures and Reimbursement: Sub-grantees shall adhere to and use the FA's Purchasing Process (Exhibit D).

F. Monitoring: Sub-grantee agrees to allow the FA reasonable access to the grant grant project for the purposes of monitoring programmatic progress and the financial and business management aspects of the grant award to ensure the project objectives are met and funds are spent and accounted for properly. Access shall include inspection of financial and program reports, site-visits, teleconferences and/or such other means necessary for the FA to carry out its monitoring obligations.

IV. Termination of Grant

This agreement will terminate upon completion of the project or May 31, 2013 whichever comes first.

- A. This grant may be terminated or fund payment suspended by the PPC where there is failure to comply with terms and conditions.
1. The grant application form and attachments
 2. The grant award contract
 3. Any state or federal law to which compliance is required
 4. An audit report which includes audit exceptions not answered to the satisfaction of

the FA.

- B. Upon such finding, the FA shall notify the Sub-grantee in writing to correct any deficiencies found. If said deficiencies are not correct within twenty (20) days, the FA will suspend or cancel grant application after furnishing written notice to the Sub-grantee.
- C. This agreement may be terminated by the Sub-grantee in the there is a failure of the FA to perform any of its obligations under this Agreement.
- D. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

V. Conflict of Interest:

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

A. Advice: No individual, public official, ore employee of a state or unit of local government or of non-governmental grantees/sub-grantees shall participate personally through decision, approval, disapproval, recommendations, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which these funds are used, where to his knowledge he or his immediate family, partners, organization other than a public agency in which he is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

B. Appearance: In the use of these grant funds, officials or employees of state or local units of government and non-government grantee/sub-grantees shall avoid any action which might result in, ore create the appearance of:

1. using his or her official position for private gain
2. Giving preferential treatment to any person
3. Losing complete independence or impartiality
4. Making an official decision outside official channels; or
5. Affecting adversely the confidence of the public in the integrity of the government or the program.

VI. Products / Income from Grants

A. Copyrights: Except as otherwise provided in the terms and conditions of this Agreement, the Sub-grantee or a contractor paid through this grant is free to copyright any books, publications or other copyrightable materials developed in the course of or under this grant. However, the federal awarding agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes

1. The copyright in any work developed under this grant or through a contract under this grant; and,

2. Any rights of the copyright to which a Sub-grantee or sub-contractor purchases ownership of, with grant support.

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

B. Publications: The Sub-grantee may, publish, at its own expense, the results of grant activity without prior review of the FA provided that any publication (written, oral or visual) contains an acknowledgment of the Port Security Grant support. The Sub-grantee agrees that any publication (written, visual, or sound, but excluding press releases, newsletters, and issue analyses) issued by the Sub-grantee describing programs or projects funded in whole or in part with Federal funds, shall contain the following statement: "This project was supported by the Port Security Grant Program FY2009 awarded by the Federal Emergency Management Agency, U.S. Department of Homeland Security."

C. Program Income: All program income generated by this grant during the project period must be reported to the FA following the month earned and must be put back into the project to be used to reduce the federal participation in the program in accordance with OMB Circular A-110.

VII. General Provisions

A. Dispute Resolution: If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree to submit the dispute to a Dispute Resolution Committee consisting of three representatives. One representative shall be selected by the Sub-grantee, one shall be selected by the FA and one shall be selected by the Captain of the Port. The Committee shall meet promptly after submission of the dispute and each party shall have an opportunity to present information to the Committee in support of its respective position relative to the dispute. Within 20 days of the Committee session to hear the dispute, the Committee shall render a decision on the dispute, which decision shall be made by majority vote of the Committee. The decision of the Committee shall be final and binding on the parties. The parties agree that judgment based upon

the decision rendered by the Committee may be entered in any court having jurisdiction of this agreement.

B. Modification: No modification, termination or attempted waiver of this Agreement or any provision hereof shall be valid unless in writing signed by both parties to this Agreement.

C. Notices: All notices, requests, demands and other communications required or permitted to be made under this Agreement shall be in writing and shall be given by personal delivery, by certified mail, return receipt requested, first class postage prepaid, or by nationally recognized overnight delivery service, in each case addressed to the party entitled to receive the same at the address specified below. Either party may change the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice. Notice shall be deemed to be effective, if personally delivered, when delivered; if mailed, at midnight on the third business day after being sent by certified mail; and if sent by nationally recognized overnight delivery service, on the next business day following delivery to such delivery service.

If to the FA:

Ms. Mary Ann Bucci
Fiduciary Agent
Pittsburgh Area Maritime Security Committee
425 Sixth Avenue – Suite 2990
Pittsburgh, PA 15219
(412) 201-7331 – Office
(412) 398-7188 – Cell
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If to the Sub-grantee:

Lt. Brian Tolka
City of Morgantown
228 South High Street
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304-291-7479 - Office