

OFFICE OF EMERGENCY SERVICES

State Homeland Security Grant Programs Funding for Equipment, Planning, Administration, Training and Exercises

THIS AGREEMENT is entered into by and between County of Merced ("County") and the City of Merced ("Sub-Recipient").

County and Sub-Recipient have entered into this AGREEMENT with reference to the following circumstances:

- A. The California State Homeland Security Grant Program (SHSGP) is providing funding through federal grants from the Department of Homeland Security to enhance the capabilities of state and local first responders by allowing the purchase of advanced types of equipment, as well as addressing other critical homeland security needs, including administration, planning, training and exercise related costs.

NOW, THEREFORE, based on the foregoing recitals, which the parties agree to be true and correct, it is mutually agreed between both parties:

- I. This AGREEMENT applies to the State Homeland Security Grant Program, funded through the County to the Sub-Recipient.
- II. Amendments or modifications to the terms of this AGREEMENT must be made in writing, and approved by all parties hereto, in order to maintain compliance with changes pursuant to federal or state laws, regulations, or policies affecting pertinent regulations or funding.
- III. The FY 2022 GRANT ASSURANCES for the SHSGP, promulgated by the California Office of Emergency Services, is made part of this AGREEMENT and included as ATTACHMENT A.

Sub-Recipient certifies that:

- 1) Sub-Recipient will comply with the FY 2022 GRANT ASSURANCES;
- 2) Sub-Recipient's signatory to this agreement will separately sign the FY 2022 GRANT ASSURANCES included as ATTACHMENT A;
- 3) Sub-Recipient's signatory has obtained the required written authorization from signatory's applicable governing body, as set forth in the attached FY 2022 GRANT ASSURANCES, that signatory is authorized to sign this AGREEMENT.

IV. TERMINATION:

- A. Without Cause: County will have the right to terminate this AGREEMENT without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. County will pay to the Sub-Recipient the compensation earned for pre-approved work performed and not previously paid for during the period of this AGREEMENT to the date of termination. County will not pay lost anticipated profits or other economic loss.

The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this AGREEMENT, and is conditioned upon receipt from Sub-Recipient of any and all plans, specifications and estimates, and other documents prepared by Sub-Recipient in accordance with this AGREEMENT. No sanctions will be imposed.

B. With Cause: This AGREEMENT may be terminated by either party should the other party:

1. be adjudged as bankrupt, or
2. become insolvent or have a receiver appointed, or
3. make a general assignment for the benefit of creditors, or
4. suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this AGREEMENT, or
5. materially breach this AGREEMENT.

For any of the occurrences except item (5), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the AGREEMENT may be terminated following the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within five (5) days of written notice specifying the breach. If the breach is not remedied within that five (5) day period, the non-defaulting party may terminate the AGREEMENT on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a five (5) day period, the defaulting party may, submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice specifying the date of termination. County will pay to the Sub-Recipient the compensation earned for work performed and not previously paid for to the date of termination. County will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If the expense of finishing the Sub-Recipient scope of work exceeds the unpaid balance of the AGREEMENT, the Sub-Recipient must pay the difference to the County. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this AGREEMENT, and is conditioned upon receipt from Sub-Recipient of any and all plans, specifications and estimates, and other documents prepared by Sub-Recipient by the date of termination in accordance with this AGREEMENT. Sanctions taken will be possible rejection of future proposals based on specific causes of non-performance.

C. Effects of Termination: Expiration or termination of this AGREEMENT shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the AGREEMENT, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where Sub-Recipient's services have been terminated by the County, said termination will not affect any rights of the County to recover damages against the Sub-Recipient or to require the forfeiture of equipment acquired or obtained through grant funds as provided in section III, paragraph 44, subparagraph (c).

- D. Suspension of Performance: Independent of any right to terminate this AGREEMENT, the authorized representative of County for which Sub-Recipient's services are to be performed, may immediately suspend performance by Sub-Recipient, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by Sub-Recipient to comply with the provisions of this AGREEMENT, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.
- V. TERM: This AGREEMENT shall commence on the date of County signature and continue until terminated under the provisions of paragraph IV. The performance period for the FY 2022 SHSGP is 09/01/2022 to 05/31/2025.
- VI. INDEMNIFICATION:
- A. County shall defend, indemnify and hold Sub-Recipient and its respective officers, board members, employees and agents, harmless from and against any and all liability, loss, expense, reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this AGREEMENT but only in proportion to and to the extent such liability, loss, expense, reasonable attorneys' fees, or claims for injury or damages are caused by or result from the negligent acts or omissions, or willful misconduct of County, its officers, agents, or employees.
 - B. Sub-Recipient shall defend, indemnify and hold County, its officers, board members, employees and agents, harmless from and against any and all liability, loss, expense, reasonable attorneys' fees, or claims for injury or damage arising out of the performance of this AGREEMENT but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent acts or omissions, or willful misconduct of Sub-Recipient and its officers, agents, or employees.
- VII. INSURANCE: Sub-Recipient certifies it is insured or self-insured for general liability exposures with limits of no less than \$1 million per occurrence. Sub-Recipient certifies it is insured or self-insured for workers' compensation and maintains statutory limits. Sub-Recipient agrees that coverage limits specified within the agreement will not be used to reduce limits of coverage from Sub-Recipient full policy limits. Insurance Policies will not be used to limit liability or to limit the indemnification provisions and requirements of this agreement or act in any way to reduce available coverage and limits from the insurer. Failure to maintain or renew coverage may be a material breach of this AGREEMENT.
- VIII. ENTIRE AGREEMENT REPRESENTED: This AGREEMENT represents the entire agreement between Sub-Recipient and County as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this AGREEMENT may be modified without the written consent of both parties.

Signature page to follow

Sub-Recipient

The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Sub-Recipient.

Name: _____

Address: _____

Title: _____ Date: _____

Signature: _____

Printed Name: _____

County of Merced

APPROVED AS TO FORM:

By: _____

Chairman, Board of Supervisors

Date: _____

Craig Cornwell
City Attorney
City of Merced

REVIEWED AS TO LEGAL FORM

By: _____

County Counsel