Print Form

# SUBGRANTEE AGREEMENT

## 06-AZDOHS-LETPP-_____

Enter Grant Agreement Number above (e.g., 222xxx-xx)

## Between

## The Arizona Department of Homeland Security
## And

_____

Enter the Name of the Sub-recipient's Agency above

WHEREAS, A.R.S. § 41-4254 charges the Arizona Department of Homeland Security (AZDOHS) with the responsibility of administering funds.

THEREFORE, it is agreed that the AZDOHS shall provide funding to the

_____

Enter the Name of the Sub-recipient's Agency above

(sub-recipient) for services under the terms of this Grant Agreement.

**I. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to specify the responsibilities and procedures for the sub-recipient's role in administering homeland security grant funds.

**II. TERM OF AGREEMENT, TERMINATION AND AMENDMENTS**

This Agreement shall become effective on November 1, 2008 and shall terminate on April 30, 2009.

**III. DESCRIPTION OF SERVICES**

The sub-recipient shall provide the services for the State of Arizona, Arizona Department of Homeland Security as approved in the grant application titled,

"_____"

and funded at $_____ (as may have been modified by the award letter).

Enter Funded Amount above

**IV. MANNER OF FINANCING**

The AZDOHS shall:

a) Provide up to $_____ to the sub-recipient for services provided under Paragraph III.

Enter Funded Amount above

b) Payment made by the AZDOHS to the sub-recipient shall be on a reimbursement basis only and is conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by the AZDOHS, to be submitted by the sub-recipient. A listing of acceptable documentation can be found at www.azdohs.gov. Final payment will be contingent upon receipt of all fiscal and programmatic reports required of the sub-recipient under this Agreement.

**V. FISCAL RESPONSBILITY**

It is understood and agreed that the total amount of the funds used under this Agreement shall be used for the project(s) and scope of work outlined in this Agreement. Therefore, should the project not be completed, be partially completed, or be completed at a lower cost than the original budget called for, the amount reimbursed to the sub-recipient shall be for only the amount of dollars actually spent by the sub-recipient. For any funds received under this Agreement for which expenditure is disallowed by an audit exemption by the AZDOHS, the State, or Federal government, the sub-recipient shall reimburse said funds directly to the AZDOHS immediately.

## VI. FINANCIAL AUDIT

The sub-recipient agrees to terms specified in A.R.S. § 35-214 and §35-215.

In addition, in compliance with the Federal Single Audit Act (31 U.S.C. par., 7501-7507), as amended by the Single Audit Act Amendments of 1996 (P.L. 104 to 156), the sub-recipient must have an annual audit conducted in accordance with OMB Circular #A-133 ("Audits of States, Local Governments, and Non-profit Organizations") if the sub-recipient expends more than $500,000 from federal awards. If the sub-recipient has expended more than $500,000 in federal dollars, a copy of the sub-recipient's audit report for the previous fiscal year must be submitted to the AZDOHS for review within thirty (30) days of signing this Agreement.

## VII. APPLICABLE FEDERAL REGULATIONS

The sub-recipient must comply with the Office of Management and Budget (OMB) Circulars Code of Federal Regulations (CFR) and other federal guidance including but not limited to:

a) 44 CFR Chapter 1, Federal Emergency Management Agency, Department of Homeland Security at http://www.access.gpo.gov/nara/cfr/waisidx_07/44cfrv1_07.html.

b) 2 CFR 225 Cost Principles for State, Local & Indian Tribal Governments, formerly OMB at.http://www.access.gpo.gov/nara/cfr/waisidx_07/2cfr225_07.html. Cost Principles: 2 CFR Part 225, State and Local Governments; 2 CFR Part 220, Educational Institutions; 2 CFR Part 230, Non-Profit Organizations; Federal Acquisition Regulation Sub-part 31.2, Contracts with Commercial Organizations. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, at http://www.whitehouse.gov/omb/circulars/a133/a133.html.

c) 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local governments (formerly OMB Circular A-102 at http://149.168.212.15/mitigation/Library/44_CFR-Part_13.pdf. U.S. Department of Homeland Security Authorized Equipment List (AEL) available at https://www.rkb.mipt.org/ael.cfm 2 CFR Part 215, Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

d) 28 CFR applicable to grants and cooperative agreements including Part II, Applicability of Office of Management and Budget Circulators; Part 18, Administrative Review Procedure; Part 20 Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence System Operating Policies; Part 42, Non-discrimination Equal Employment Opportunities Policies and Procedures; Part 61, Procedures for Implementing the national Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Part 66.

Included within the above mentioned guidance documents are provisions for the following:

**NIMSCAST**
The sub-recipient agrees to complete the National Incident Management Compliance Assistance Support Tool (NIMSCAST) and remain in compliance.

**Environmental Planning and Historic Preservation**
The sub-grantee must comply with Environmental Planning and Historic Preservation, in accordance with DHS Information Bulletin (IB) dated December 5, 2007.

**Individual Consultants**
Billings for consultants who are individuals must include at a minimum: a description of services; dates of services; number of hours for services performed; rate charged for services; and, the total cost of services performed. Individual consultant costs must be within the prevailing rates, must be obtained under consistent treatment with the procurement policies of the sub-grantee and 44 CFR Chapter 1 Part 13 and should not exceed the maximum of $450.00 per day unless prior written approval is granted by the AZDOHS.

**Personnel and Travel Costs**
Personnel and Travel costs must be consistent with the sub-recipient's policies and procedures and must be applied uniformly to both federally financed and other activities of the agency. At no time can the sub-recipient's policies exceed the state rate established by the Arizona Department of Administration, General Accounting Office Travel Policies: http://www.gao.state.az.us.

**Non-Supplanting Agreement**
The sub-recipient shall not use funds to supplant state or local funds or other resources that would otherwise have been made available for this program/project. Further, if a position created by a grant is filled from within, the vacancy created by this action must be filled within 30 days. If the vacancy is not filled within 30 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.

**Property Control**
Effective control and accountability must be maintained for all property. The sub-recipient must adequately safeguard all such property and must assure that it is used solely for authorized purposes as described in the guidance and application. The sub-recipient shall exercise caution in the use, maintenance, protection and preservation of such property.

Terms used in this subpart have the following meaning (See also Reclamation Supplement to Federal Property Management Regulations, Part 60 Property Accountability, Subpart 114S-60.4 Classification of Property).

a) Nonexpendable: Nonexpendable property is property which has a continuing use, is not consumed in use, is of a durable nature with an expected service life of one or more years, has an acquisition cost of $300 or more, and does not become a fixture or lose its identity as a component of other equipment or plant.

b) Property Control Record Form: At the time when the final request for reimbursement is submitted, the sub-recipient must file with the AZDOHS a copy of their Property

Control Record Form listing all such capital property acquired with grant funds. The sub-recipient agrees to be subject to equipment monitoring and auditing by state or federal authorized representatives for verification of information.

c) Use and Disposition: Equipment shall be used by the sub-recipient in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by federal grant funds. When use of the property for project activities is discontinued, the sub-recipient shall request in writing disposition instructions from the AZDOHS before actual disposition of the property. Theft, destruction, or loss of property shall be reported to the AZDOHS immediately.

**Allowable Costs**
The allow ability of costs incurred under this agreement shall be determined in accordance with the general principles of allow ability and standards for selected cost items as set forth in the applicable OMB Circulars, Code of Federal Regulations, authorized equipment list and guidance documents referenced above.

## VIII. DEBARMENT CERTIFICATION

The sub-recipient agrees to comply with the Federal Debarment and Suspension regulations as outlined in the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions".

## IX. FUNDS MANAGEMENT

The sub-recipient must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. The sub-recipient must manage funds according to applicable federal regulations for administrative requirements, costs principles and audits.

The sub-recipient must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are:

- Financial Management
- Procurement
- Personnel
- Property
- Travel

A system is adequate if it is 1) written; 2) consistently followed – it applies in all similar circumstances; and 3) consistently applied – it applies to all sources of funds.

## X. REPORTING REQUIREMENTS

Regular reports by the sub-recipient shall include:

a) Programmatic Reports

1. The sub-recipient shall provide quarterly program activity reports to the AZDOHS within fifteen (15) working days of the last day of the quarter in which services are provided except for the final report which shall be submitted within forty-five (45) days. The sub-recipient shall use the form provided by the AZDOHS to submit quarterly program activity reports. The report shall contain such information as deemed necessary by the AZDOHS. The sub-recipient shall use the Quarterly Program Report Format template, which is posted at www.azdohs.gov.

    a. Quarterly reports are due:

**February 15, 2009** (period November 1, 2008 – January 31, 2008)
**May 15, 2009** (period February 1, 2009 – April 30, 2009)
The final programmatic report as submitted shall be marked FINAL.

b) Financial Reimbursements

1. The sub-recipient shall provide as frequently as monthly but no less than quarterly requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Cover Sheet template provided on line at the AZDOHS website, www.azdohs.gov. The sub-recipient shall submit a final reimbursement for expenses obligated prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked FINAL.

All reports shall be submitted to the contact person as described in Paragraph XL, NOTICES, of this Agreement.

## XI. ASSIGNMENT AND DELEGATION

The sub-recipient may not assign any rights hereunder without the express, prior written consent of both parties.

## XII. AMENDMENTS

Any change in this Agreement including but not limited to the Description of Services and budget described herein, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by and between the duly authorized representative of the sub-recipient and the AZDOHS.

Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of the sub-recipient's compensation if applicable; 3) be titled as an "Amendment"; and 4) be signed by the parties identified in the preceding sentence. The sub-recipient expressly and explicitly understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

## XIII. SUBCONTRACTORS

The sub-recipient may enter into written subcontract(s) for performance of certain of its functions under the contract in accordance with terms established in the State of Arizona procurement policy, OMB Circulars, Code of Federal Regulations, DHS guidance and DHS Program Guide.

The sub-recipient agrees and understand that no subcontract that the sub-recipient enters into with respect to performance under this Agreement shall in any way relieve the sub-recipient of any responsibilities for performance if its duties. The sub-recipient shall give the AZDOHS immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the sub-recipient by any subcontractor or vendor which in the opinion of the sub-recipient may result in litigation related in any way to the Agreement with the AZDOHS.

## XIV. OFFSHORE PERFORMANCE OF WORK PROHIBITED

Due to security and identity protection concerns, all services under this Agreement shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by subcontractors at all tiers.

## XV. AGREEMENT RENEWAL

This Agreement shall not bind nor purport to bind either party for any contractual commitment in excess of the original Agreement period.

## XVI. RIGHT TO ASSURANCE

If the AZDOHS in good faith has reason to believe that the sub-recipient does not intend to, or is unable to perform or continue performing under this Agreement, the AZDOHS may demand in writing that the sub-recipient give a written assurance of intent to perform. Failure by the sub-recipient to provide written assurance within the number of days specified in the demand, the AZDOHS at its option, may terminate this Agreement.

## XVII. CANCELLATION FOR CONFLICT OF INTEREST

The AZDOHS may, by written notice to the sub-recipient, immediately cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State or its subdivisions (unit of local government) is an employee or agent of any other party in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to the Agreement receive written notice from the AZDOHS, unless the notice specifies a later time. This Agreement is subject to cancellation by either party pursuant to A.R.S. § 38-511.

## XVIII. THIRD PARTY ANTITRUST VIOLATIONS

The sub-recipient assigns the State of Arizona any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to sub-recipient toward fulfillment of this Agreement.

## XIX. AVAILABILITY OF FUNDS

Every payment obligation of the AZDOHS under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If the funds are not allocated and available for the continuance of this Agreement, the AZDOHS may terminate this Agreement at the end of the period for which funds are available. No liability shall accrue to the AZDOHS in the event this provision is exercised, and the AZDOHS shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph, including purchases and/or contracts entered into by the sub-recipient in the execution of this Agreement.

## XX. FORCE MAJEURE

If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.

## XXI. PARTIAL INVALIDITY

Any term or provision of this Agreement that is hereafter declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

## XXII. ARBITRATION

In the event of any dispute arising under this Agreement, written notice of the dispute must be provided to the other party within thirty (30) days of the events giving the rise to the dispute. The sub-recipient agrees to terms specified in A.R.S. § 12-1518.

## XXIII. GOVERNING LAW AND CONTRACT INTERPRETATION

a) This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.

b) This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document.

c) Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.

## XXIV. ENTIRE AGREEMENT

This Agreement and its Exhibits constitute the entire Agreement between the parties hereto pertaining to the subject matter hereof and may not be changed or added to except by a writing signed by all parties hereto in conformity with Section X Reporting Requirements of this Agreement; provided, however, that the AZDOHS shall have the right to immediately amend this Agreement so that it complies with any new legislation, laws, ordinances, or rules affecting this Agreement. The sub-recipient agrees to execute any such amendment within ten (10) business days of its receipt. All prior and contemporaneous agreements, representations, and understandings of the parties, oral, written, pertaining to the subject matter hereof, are herby superseded or merged herein.

## XXV. RESTRICTIONS ON LOBBYING

The sub-recipient shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of a State or Federal government.

## XXVI. LICENSING

The sub-recipient, unless otherwise exempted by law, shall obtain and maintain all licenses, permits and authority necessary to perform those acts it is obligated to perform under this Agreement.

## XXVII. NON-DISCRIMINATION

The sub-recipient shall comply with all state and federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act, in accordance with A.R.S. Title 41, Chapter 9, Article 4 and Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin, disability or political affiliation, shall have equal access to employment opportunities.

## XXVIII. SECTARIAN REQUESTS

Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.

## XXIX. SEVERABILITY

The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement.

## XXX. ADVERTISING AND PROMOTION OF AGREEMENT

The sub-recipient shall not advertise or publish information for commercial benefit concerning this Agreement without the written approval of the AZDOHS.

## XXXI. OWNERSHIP OF INFORMATION, PRINTED AND PUBLISHED MATERIAL

The AZDOHS reserves the right to review and approve any publications funded or partially funded through this Agreement. All publications funded or partially funded through this Agreement shall recognize the AZDOHS and the U.S. Department of Homeland Security. The U.S. Department of Homeland Security and the AZDOHS shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all materials prepared under this Agreement.

The sub-recipient agrees that any report, printed matter, or publication (written, visual, or sound, but excluding press releases, newsletters, and issue analyses) issued by the sub-recipient describing programs or projects funded in whole or in part with federal funds shall contain the following statement:

> "This project was supported by Federal Grant CFDA 97.067 awarded by the Arizona Department of Homeland Security. Points of view or opinions contained within this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Homeland Security and the Arizona Department of Homeland Security."

The sub-recipient also agrees that one copy of any such publication, report, printed matter, or publication shall be submitted to the AZDOHS to be placed on file and distributed as appropriate to other potential sub-grantees or interested parties. The AZDOHS may waive the requirement for submission of any specific publication upon submission of a request providing justification from the sub-recipient.

The AZDOHS and the sub-recipient recognize that research resulting from this Agreement has the potential to become public information. However, prior to the termination of this Agreement, the sub-recipient agrees that no research-based data resulting from this Agreement shall be published or otherwise distributed in any form without express written permission from the AZDOHS and possibly the U.S. Department of Homeland Security. It is also agreed that any report or printed matter completed as a part of this agreement is a work for hire and shall not be copyrighted by the sub-recipient.

## XXXII. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS

Any television public service announcement that is produced or funded in whole or in part by the sub-recipient shall include closed captioning of the verbal content of such announcement.

## XXXIII. INDEMNIFICATION

To the extent permitted by law, each party (as indemnitor) agrees to indemnify, defend and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as claims) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in

vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

**XXXIV. CONFIDENTIALITY OF SUBGRANTEE 'S INFORMATION**

The sub-recipient acknowledges that confidentiality provided in A.R.S. § §41-1505.06 (D) and 41-1505.07(J) may be waived with the sub-recipient consent, and sub-recipient consents to a total and complete waiver of confidentiality. In waiving confidentiality, sub-recipient understand and consents to disclosure of any information submitted to the AZDOHS that concerns the identify, background, financial status, marketing plans, or trade secrets or any other proprietary information related to the sub-recipient or any person or organization involved in the project(s), including the application and supporting materials, unless such information or materials are clearly marked as "confidential".

**XXXV. TERMINATION**

a) All parties reserve the right to terminate the Agreement in whole or in part due to the failure of the sub-recipient or the grantor to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits or to make satisfactory progress in performing the Agreement. The staff of either party shall provide a written 30 day advance notice of the termination and the reasons for it.

b) If the subrecipient chooses to terminate the contract before the grant deliverables have been met then the AZDOHS reserves the right to collect all reimbursements distributed to the subrecipient.

c) The AZDOHS may, upon termination of this Agreement, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Agreement. The sub-recipient shall be liable to the AZDOHS for any excess costs incurred by the AZDOHS in procuring materials or services in substitution for those due from the sub-recipient.

**XXXVI. CONTINUATION OF PERFORMANCE THROUGH TERMINATION**

The sub-recipient shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

**XXXVII. PARAGRAPH HEADINGS**

The paragraph headings in this AGREEMENT are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this AGREEMENT or any of its provisions.

**XXXVIII. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, copies, or duplicate originals. Each such counterpart, copy, or duplicate original shall be deemed an original, and collectively they shall constitute one agreement.

**XXXIX. AUTHORITY TO EXECUTE THIS AGREEMENT**

Each individual executing this Agreement on behalf of sub-recipient represents and warrants that he or she is duly authorized to execute this Agreement.

**XL. NOTICES**

Any and all notices, requests, demands or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing and shall be delivered in person or shall be sent by the United States Postal Service, certified mail, return receipt requested, to the respective parties at the following addresses:

Arizona Department of Homeland Security
1700 West Washington, Suite 210
Phoenix, AZ 85007

The sub-recipient shall address all programmatic notices relative to this Agreement to the appropriate Regional Strategic Planner; contact information at www.azdohs.gov.

The sub-recipient shall submit reimbursement requests relative to this Agreement to the appropriate Regional Finance Specialist; contact information at www.azdohs.gov.

AZDOHS shall address all notices relative to this Agreement to:

_____
Enter Title, First & Last Name above

_____
Enter the Name of the Sub-recipient's Agency above

_____
Enter Street Address

_____
Enter City, State, ZIP

## XLI. IN WITNESS WHEREOF

The parties hereto agree to execute this Agreement.

**FOR AND BEHALF OF THE**

_____
Enter the Name of the Sub-recipient's Agency above

_____
Authorized Signature above

_____
Print Name & Title above

_____
Enter Date above

**FOR AND BEHALF OF THE**

Arizona Department of Homeland Security

_____
Leesa Berens Morrison
Director

_____
Date

(Please be sure to complete and mail two original documents to the Arizona Department of Homeland Security)