

SOUTH TEXAS AREA MARITIME SECURITY COMMITTEE (STAMSC)

**PORT SECURITY GRANT PROGRAM SUB-GRANTEE AWARD
AGREEMENT**

between

W.J.WAGNER, INC

and

CITY OF CORPUS CHRISTI, TX

This Agreement, between W.J. Wagner, Inc, as Fiduciary Agent (hereinafter referred to the Fiduciary Agent) and the City of Corpus Christi, TX (hereinafter referred to as Sub-grantee) is effective from this **1st day of April, 2012 until August 31, 2014**. 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 these conditions in all contracts of employment, consultant's agreements, and contracts issued under its approved application.

I. Authority and Purpose

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 Sector Corpus Christi port area by the Federal Emergency Management Agency (hereinafter FEMA) under the 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 Sub-grantee an allocation of funds from the **Port Security Grant Program (PSGP), Award Number EMW-2011-PU-K00178-05, in the amount of \$244,302 for Mobile Interoperable Communications Vehicle** in accordance with the Investment Justification (Exhibit A) and Budget (Exhibit B) approved by the South Texas 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 most recent version of the Administrative Requirements, Cost Principles, and Audit Requirements.

Administrative Requirements:

For state, local, and tribal governments: **44 CFR Part 13**, Uniform administrative Requirements for grants and Cooperative Agreements to State and Local Governments.

For all other Subgrantees: **2 CFR Part 215**, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations (OMB Circular A-110) (also applies to for-profit entities)

Cost Principles:

For state, local, and tribal governments: **2 CFR Part 225**, Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)

For colleges and universities: **2 CFR Part 220** Cost Principles for Educational Institutions (OMB Circular A-121)

For not-for-profits: **2 CFR Part 230** Cost Principles for Non-Profit Organizations (OMB Circular A-122)

For for-profits: **48 CFR Part 31** (FAR 31.2) Contract Cost Principles and Procedures, Contracts with Commercial Organizations

Audit Requirements:

For all sub-grantees: **OMB Circular A-133**, Audits of States, Local Governments, and Non-Profit Organizations

A-133 requires an annual organization-wide audit or program audit if Sub-grantee expends \$500,000 or more of federal funds during its fiscal year, unless a lower threshold is established by any applicable rule, regulation or standard.

Copies of these OMB Circulars are available for download on the OMB website at www.whitehouse.gov/OMB/grants/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 PSGP application. These include SF 424 B and D (Assurances - Non-Construction and Construction Programs), Certifications Regarding Lobbying; Debarment, Suspension And Other Responsibility Matters; and Drug-Free Workplace Requirements, and Accounting System. The assurances and certifications are attached to this agreement, and should be signed and returned to the Fiduciary Agent.

C. PSGP Guidance: The Sub-grantee agrees that all allocations and use of funds under this grant will be in accordance with the FY 2011 Port Security Grant Program guidance and application kit.

D. The Sub-grantee understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation, or policy at any level of government.

E. The Sub-grantee shall not develop or engage in the development of tasks not approved in the application without approval from the Fiduciary Agent (FA) and the issuance of a Grant Amendment by FEMA. The FA will monitor the project on a continual basis by maintaining ongoing contact with the Sub-grantee, and will provide input to the program's direction as needed.

F. You as Sub-grantee and your employees, may not:

- 1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- 2) Procure a commercial sex act during the period of time that the award is in effect; or
- 3) Use forced labor in the performance of the award

G. Non-Supplanting Stipulation: The Sub-grantee shall not use grant funds to supplant funds that have been budgeted for the same purpose through non-Federal sources. Sub-grantee may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds.

H. Environmental and Historic Preservation Requirements: Sub-grantee shall comply with all 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 Fiduciary Agent and the appropriate State Historic Preservation Office.

I. 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 audit report. In addition, the Sub-grantee agrees to submit a copy of the project's annual audit to the Fiduciary Agent.

J. Reporting Requirements: The Sub-grantee agrees to submit, at such times and in such form as may be prescribed, reports as the Fiduciary Agent may reasonably require, such as quarterly financial reports (SF-425) not 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 Fiduciary Agent within thirty (30) days after the termination of the last year of the grant award. The Fiduciary Agent must receive the final progress report prior to the final cost report being paid.

K. 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 of 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.

L. 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 Fiduciary Agent shall not be obligated or liable for any breach of contract or other action in law to any party other than the original Sub-grantee.

M. Waiver: It is agreed that the failure of the Fiduciary Agent 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 Fiduciary Agent under this Agreement.

N. Property acquired with grant funds: Effective control and accountability must be maintained for all personal property in accordance with 44 CFR 13.32. All property must be tagged and tracked. Sub-grantees must adequately safeguard all such property and must assure that it is used solely for authorized grant purposes. Non-Expendable property is defined as any item having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. At the time the final

request for payment is submitted, the Sub-grantee must file with the Fiduciary Agent 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.

O. Insurance: The Fiduciary Agent encourages Sub-grantee to obtain and carry, with the Fiduciary Agent named as additional insured, 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. If Sub-grantee does not obtain and maintain the desired insurance, Sub-grantee shall indemnify, defend, and hold harmless the Fiduciary Agent 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 Fiduciary Agent that would have been covered by said insurance if Sub-grantee had obtained and maintained it.

P. Indemnity and Hold Harmless: Sub-grantee shall indemnify, defend and hold harmless the Fiduciary Agent, arising out of or related to Sub-grantee's performance under this Agreement, whether caused by or contributed to by the Fiduciary Agent or any other party indemnified herein, including but limited to any breach, misfeasance, malfeasance, negligent or intentional acts of Sub-grantee, its officers, agents, or employees or its contractors or subcontractors, unless such loss is caused solely by the misfeasance, malfeasance, or negligence of the Fiduciary Agent, its officers, directors, employees or agents.

Q. Confidentiality and Non-Disclosure: The Sub-grantee agrees to furnish the Fiduciary Agent with certain confidential information relating to the grant award. The Fiduciary Agent agrees to review, examine, inspect or obtain such confidential information only for the purposes described herein, and to otherwise hold confidential/proprietary information or trade secrets in trust and confidence. The Fiduciary Agent agrees not to disclose any such confidential information to any third party, except to the U.S. Government.

III. Operational Procedures

A. Project Implementation: Sub-grantee agrees to implement this project within sixty (60) days following the grant award effective date, or this Agreement may be subject 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-grantee's 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 FY2011 PSGP federal funds. Adequate documentation is defined in the Fiduciary Agent Purchasing Process document attached to this Agreement as Exhibit D, which is made a 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 Fiduciary Agent'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 Sub-grantee is in default on filing any informational or financial reports required by the Fiduciary Agent.** All claims for reimbursement must be accompanied with copies of all supporting documentation (i.e. time sheets, 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 USCG COTP 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 the exception of those changes permitted in accordance with the provisions cited later in this section, and (e) changes in the length of the grant period. Equipment not included in the approved budget may not be purchased without prior approval of the USCG COTP and FEMA. The Sub-grantee may deviate from quantities of equipment items 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 Fiduciary Agent. Both the Fiduciary Agent and the Sub-grantee shall maintain this notification in the project file. Sub-grantees may not add to the specified equipment list without prior approval of FEMA unless the total dollar amount of the equipment budgeted is not exceeded.

E. Procurement Standards, Procedures and Reimbursement: Sub-grantees shall adhere to and use the Fiduciary Agent Purchasing Process, Exhibit D.

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

IV. Termination of Grant

This Agreement will terminate upon completion of the project or August 31, 2014, whichever is earlier.

A. This grant may be terminated or fund payments suspended by the Fiduciary Agent where there is a failure to comply with the terms and conditions of:

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 Fiduciary Agent.

B. Upon such finding, the Fiduciary Agent shall notify the Sub-grantee in writing to correct any deficiencies found. If said deficiencies are not corrected within twenty (20) days, the Fiduciary Agent will suspend or cancel the grant application after furnishing written notice to the Sub-grantee.

C. This Agreement may be terminated by the Sub-grantee in the event there is a failure of the Fiduciary Agent 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, or employee of a state or unit of local government or of nongovernmental grantees/Sub-grantees shall participate personally through decision, approval, disapproval, recommendation, 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 nongovernmental grantees/Sub-grantees shall avoid any action which might result in, or 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 copyright to which a Sub-grantee or subcontractor 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 by the Fiduciary Agent provided that any publication (written, oral, or visual) contains an acknowledgement of Port Security Grant Program 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 FY 2011 Infrastructure Protection Program: Port Security Grant Program, 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 Fiduciary Agent 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.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above conditions.

Signature of the Authorizing Official

Date