

CO/H MOA 4: FOR USE IN DEMHS REGIONS 1, 2, 3, 4 OR 5, WITH A MUNICIPALITY THAT HAS AGREED TO BE THE CUSTODIAL OWNER OF A REGIONAL ASSET(S), AND AN ORGANIZATION THAT HAS AGREED TO HOUSE THE REGIONAL ASSET(S)

**MEMORANDUM OF AGREEMENT
AMONG
THE STATE OF CONNECTICUT,
DEPARTMENT OF EMERGENCY MANAGEMENT & HOMELAND SECURITY,
COORDINATING REGIONAL PLANNING ORGANIZATION (“RPO”)/CITY [INSERT
NAME]
THE DEMHS REGION ___ REGIONAL EMERGENCY PLANNING TEAM, THE TOWN
OF ___ and the _____ ORGANIZATION.
October 1, 2008**

WHEREAS, the Department of Emergency Management and Homeland Security (“DEMHS”) is the designated recipient and State Administrative Agency (“SAA”) of the United States Department of Homeland Security for grants awarded beginning in Federal Fiscal Year (FFY) 2004, up to the present time;

WHEREAS, the DEMHS Region __ Regional Emergency Planning Team (“REPT”) has been established to foster regional collaboration and mutual aid through, among other things, collaborative plan development, resource sharing and coordination;

WHEREAS, the Coordinating Regional Planning Organization (“RPO”)/CITY, _____, has agreed to operate as the fiscal agent for the federal Homeland Security grants awarded to DEMHS Region __ for Federal Fiscal Year 2007;

WHEREAS, the Town of _____ (“Town”) has agreed to assume responsibility as the custodial owner of certain asset(s) described in Appendix A of this memorandum of agreement;

WHEREAS, the Town has elected to house these asset(s) with the _____ Organization;

WHEREAS, the _____ Organization has agreed to house, use, and deploy these asset(s) on behalf of the Town, DEMHS Region __ and, if necessary, the State;

THEREFORE, DEMHS, the DEMHS Region __ REPT, the Coordinating RPO _____, and the Town of _____ and the _____ Organization, enter into this Memorandum of Agreement (“MOA”) regarding these asset(s).

1. PARTIES

The parties to this MOA are DEMHS, Coordinating RPO/CITY, **INSERT NAME** _____, the DEMHS Region __ REPT, the Town of _____ and the _____ Organization.

2. DEFINITIONS

As used in this MOA:

- The term “authorized training” means training that is authorized by DEMHS.
- The term “custodial owner” means a political subdivision or tribe that has agreed to accept title and responsibility for the asset(s), subject to possible redeployment under the terms outlined in Paragraph 7 below.

3. AUTHORITY TO ENTER INTO MOA

This agreement is made under the authority granted to DEMHS under Title 28 of the Connecticut General Statutes, and Connecticut General Statute §4-8. The persons executing this MOA on behalf of their respective entities hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into this agreement on behalf of the entity for which they sign, as indicated by valid resolutions, if necessary.

4. RESPONSIBILITIES OF COORDINATING RPO/CITY AND DEMHS

In its role as SAA, for Regions 1, 3, 4 and 5, DEMHS will provide the funds to the Coordinating RPO or City, which will, in its role as fiscal agent, procure the asset(s) listed in Appendix A. In its role as SAA in Region 2, DEMHS will operate as fiscal agent to procure the asset(s) listed in Appendix A.

5. RESPONSIBILITIES OF CUSTODIAL OWNER/TOWN OF _____

The Town understands that it is the Custodial Owner, on behalf of itself and the Region, of the asset(s) listed in Appendix A. As Custodial Owner, the Town agrees:

- a. To ensure that the asset(s) are safeguarded in a secure location, including, for example, providing refrigeration or protection from the elements, if appropriate;
- b. To regularly test, use and maintain the asset(s) in working order. It is understood by all the parties that trained personnel of the Town's public safety agencies may use the asset(s) for appropriate emergency response purposes, including authorized training and exercise;
- c. To ensure that the asset(s) are provided in a timely manner, in working order, and with appropriate staffing, if necessary, when deployment is requested: (1) under the terms of this MOA; (2) under a mutual aid agreement, including a civil preparedness mutual aid agreement approved by DEMHS, as required by Conn. Gen. Stat. §28-7(d); (3) under the terms of the intrastate mutual aid system, Connecticut General Statutes §28-22a; or (4) at any time by the State of Connecticut, including DEMHS;
- d. To ensure that the asset(s) are provided in a timely manner, in working order, and with appropriate staffing, if necessary, when deployment is requested for authorized training and/or exercise;
- e. To ensure that records are maintained of the use of the asset(s), including deployment for an actual incident or for authorized training, and to provide these records to DEMHS as requested;
- f. To maintain an inventory of the asset(s), including the specific location of the asset(s), and a unique tagging system (including the DEMHS logo) so that the asset(s) can be easily identified as separate from the Custodial Owner's other property, and to provide that inventory to DEMHS as requested.
- g. To maintain all necessary insurance regarding the asset(s) and their use;
- h. To cooperate with any state or federal audit of the asset(s) and/or their use;
- i. To abide by the bylaws and/or procedures established under any applicable State of Connecticut or regional plan;

- j. That the State, including DEMHS, does not guarantee any further funding for, or provision of repairs to, the asset(s) beyond the terms of this MOA;
- k. That all maintenance and operations of the asset(s) by the Town or its agent(s) shall conform to the manufacturer's recommendations, and that all personnel or agents of the Town performing any maintenance or repair services in connection with these asset(s) shall be properly and fully trained, insured and fully qualified and authorized or permitted under federal, state, and local laws to perform such services.
- l. That the Town shall maintain trained personnel available to deploy, transport, and/or supervise the operation of the asset(s), and that any and all Town personnel or agent(s) using the asset(s) shall be properly and fully trained, insured, and fully qualified and authorized or permitted under federal, state and local laws to use the asset(s).

6. RESPONSIBILITIES OF _____ ORGANIZATION

The _____ Organization agrees:

- a. To safeguard the asset(s) in a secure location, including, for example, providing refrigeration or protection from the elements, if appropriate;
- b. To regularly test, use and maintain the asset(s) in working order. It is understood by all the parties that trained personnel of the Organization, with the written pre-approval of the Town's Chief Executive Officer, may use the asset(s) for appropriate emergency response purposes, including authorized training and exercise;
- c. To provide the asset(s) in a timely manner, in working order, and with appropriate staffing, if necessary, when deployment is requested: (1) under the terms of this MOA; (2) under a mutual aid agreement, including a civil preparedness mutual aid agreement approved by DEMHS, as required by Conn. Gen. Stat. §28-7(d); (3) under the terms of the intrastate mutual aid system, Connecticut General Statutes §28-22a; or (4) at any time by the State of Connecticut, including DEMHS;
- d. To provide the asset(s) in a timely manner, in working order, and with appropriate staffing, if necessary, when deployment is requested for authorized training and/or exercise;
- e. To maintain records of the use of the asset(s), including deployment for an actual incident or for authorized training, and to provide these records to DEMHS or the Town as requested;
- f. To maintain an inventory of the asset(s), including the specific location of the asset(s), and a unique tagging system (including the DEMHS logo) so that the asset(s) can be easily identified as separate from the Organization's other property. This inventory will be provided to the Town at least quarterly, and immediately upon the request of the Town or DEMHS;
- g. To maintain any necessary additional insurance, in addition to the Town's insurance, regarding the asset(s) and their use;
- h. To cooperate with any municipal, state or federal audit of the asset(s) and/or their use;

- i. To abide by the bylaws and/or procedures established under any applicable municipal, State of Connecticut or regional plan;
- j. That the State, including DEMHS, does not guarantee any further funding for, or provision of repairs to, the asset(s) beyond the terms of this MOA;
- k. To maintain, or assist the Town to maintain, the asset(s) in working order, and that all maintenance and operations of the asset(s) by the Organization or its agent(s) shall conform to the manufacturer's recommendations, and that all personnel or agents of the Organization performing any maintenance or repair services in connection with these asset(s) shall be properly and fully trained, insured and fully qualified and authorized or permitted under federal, state, and local laws to perform such services.
- l. That any Organization personnel or agent using the asset(s) shall be properly and fully trained, insured, and fully qualified and authorized or permitted under federal, state and local laws to use the asset(s).

7. RESPONSIBILITIES OF THE REPT

The DEMHS Region ___ REPT understands and acknowledges that, in accepting responsibility as the custodial owner of the asset(s), the Town is furthering regional collaboration and mutual aid on behalf of all of the members of Region ___.

8. ASSIGNMENT OF ASSET(S)

If the Town or _____ Organization to which the asset(s) has been assigned does not comply with the requirements under this MOA, or terminates its involvement in this MOA, then DEMHS, in consultation with the REPT Chair, may redirect the asset(s) to a different town within the Region. The Town may remove the asset(s) from the Organization at any time, and the Organization shall immediately turn over the asset(s) to the Town or DEMHS upon request. Whenever possible, DEMHS or the Town will provide 60 days' notice before re-assigning the asset(s).

9. LIABILITY

The Parties agree to indemnify and hold harmless the State of Connecticut with regard to the activities described within this MOA, and recognize that the State does not waive its right to sovereign immunity with regard to any provision of this MOA. The State of Connecticut assumes no liability for payment, if any, under the terms of this MOA until the Parties are notified by DEMHS that the MOA has been approved by all appropriate state agencies.

10. AUDITS

The Town must comply with the Federal Single Audit Act of 1984, P.L. 98-502 and the Amendments of 1996, P.L. 104-156 and with the Connecticut General Statutes §7-396a and the State Single Audit Act §§4-230 through 236 inclusive, and regulations promulgated thereunder. The Town agrees that all fiscal records pertaining to the asset(s) shall be maintained for a period of not less than three years from the date of any expenditure related to the asset(s). Such records will be made available to the state and/or federal auditors upon request. The Organization agrees to maintain any records necessary for the Town and/or the State to satisfy any audit requirements.

11. EFFECTIVE DATE, AMENDMENT, AND TERMINATION

This agreement shall be effective when all parties have executed it and all required approvals have been granted. This agreement may be modified upon the mutual written consent of the parties. Any party may terminate its involvement with this

agreement upon sixty days' written notice to the other parties. DEMHS reserves the right to cancel the funding under this MOA without prior written notice when the funding is no longer available.

12. SETTLEMENT OF DISPUTES

The Parties agree to good faith consultation with one another to resolve disagreements that may arise under or relating to this MOA before referring the matter to any other person or entity for settlement. The Parties agree that any disputes under Paragraph 8 shall be resolved by DEMHS. The Parties also agree that the sole and exclusive means for the presentation of any claim against the state arising from this agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State) and the Parties further agree not to initiate legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.

13. OTHER LAWS

All assistance provided under this MOA must comply with applicable state and federal laws and regulations. Nothing in this agreement is intended to conflict with current laws or regulations of the State of Connecticut or the Town. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect. To the extent required by law, the Organization agrees to comply with the requirements of Paragraphs 14, 15, 16 and 17, below.

14. LOBBYING, DEBARMENT and SUSPENSION

The Town commits to compliance with the requirements under 28 CFR 66 (Uniform Requirements for Grants to States); 28 CFR Part 69 (New Restrictions on Lobbying); 28 CFR Part 67 Government-wide Debarment and Suspension (Non procurement) and Government-wide Requirements for Drug Free Workplace (Grants); Office of Management and Budget (OMB) Circular A-87, addressing cost principles for grants to state and local governments; 28 CFR Part 70 (Common Rules for Administrative Requirements for Grants to Non-Profits); OMB Circulars A-122 and A-21 addressing Cost Principles for Grants to Non-Profit Entities, and requirements included in the Office of Justice Programs OC Financial Guides.

15. EXECUTIVE ORDERS

This contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill promulgated June 16, 1971, and, as such, this contract may be cancelled, terminated or suspended by the State Labor Commissioner for violation of or noncompliance with said Executive Order No. Three, or any State or federal law concerning non-discrimination, notwithstanding that the Labor Commissioner is not a party to this contract. The parties to this contract, as part of the consideration hereof, agree that said Executive Order No. Three is incorporated herein by reference and made a part hereof. The parties agree and abide by said Executive Order and agree that the State Labor Commissioner shall have continuing jurisdiction in respect to contract performance in regard to non-discrimination, until the contract is completed or terminated prior to completion. The TOWN agrees, as part consideration hereof, that this contract is subject to the Guidelines and Rules issued by the State Labor Commissioner to implement Executive Order No. Three, and that it will not discriminate in its employment practices or policies, will file all reports as required, and will fully cooperate with the State of Connecticut and the State Labor Commissioner.

This contract is also subject to the provision of Executive Order No. 16 of Governor John G. Rowland promulgated August 4, 1999 adopting a zero tolerance policy for

workplace violence, and as such, this contract may be cancelled terminated or suspended by the State for violation of or noncompliance with said Executive Order No. Sixteen. The parties to this contract, as part of the consideration hereof, agree that said Executive Order No. Sixteen is incorporated herein by reference and made a part thereof. The parties agree to abide by such Executive Order.

The contract is also subject to provisions of Executive Order No. Seventeen of Governor Thomas J. Meskill promulgated February 15, 1973, and, as such this contract may be cancelled, terminated or suspended by the contracting agency or the State Labor Commissioner for violation of or non-compliance with said Executive Order No. Seventeen, notwithstanding that the Labor Commissioner may not be a party to this contract. The parties to this contract, as part of the consideration hereof, agree that Executive Order No. Seventeen is incorporated herein by reference and made a part hereof. The parties agree to abide by such Executive Order and agree that the contracting agency and the State Labor Commissioner shall have joint and several continuing jurisdiction in respect to contract performance in regard to listing all employment openings with the Connecticut State Employment Service.

16. NON-DISCRIMINATION CLAUSE

In accordance with Public Act 88-351, the TOWN agrees and warrants that, (a) For the purposes of this section, "minority business enterprise" means any small grantee or supplier of materials fifty-one percent or more of the capital stock, if any, or asset(s) of which is owned by person or persons: (1) Who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise and (3) who are members of a minority, as such term is defined in subsection (a) of Conn. Gen. Stat. Sect. 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

For purposes of the section, "Commission" means the Commission on Human Rights and Opportunities.

For purposes of this section, "Public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway, or other changes or improvements in real property, or which is financed in whole or in part by the State, including but not limited to, matching expenditures, grants, loans, insurance or guarantees.

The Town agrees and warrants that in the performance of the contract such Town will not discriminate or permit discrimination against any person or group or persons on the grounds of race, color, religious creed, age, marital status, national origin, sex, mental retardation or physical disability, including but not limited to, blindness, unless it is shown by such Town that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Town further agrees to take affirmative action to insure that applicants with job related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such Town that such disability prevents performance of

the work involved: the Town agrees, in all solicitations or advertisements for employees placed by or on behalf of the Town, to state that it is an “affirmative action – equal opportunity employer” in accordance with the regulations adopted by the Commission; the Town agrees to provide each labor union or representative of workers with which such Town has a collective bargaining agreement or other contract of understanding and each vendor with which Town has a contract of understanding, a notice to be provided by the Commission advising the labor union or workers’ representative of the Town’s commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; the Town agrees to comply with each provision of this section and Conn. Gen. Stat. Sect. 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. Sect. 46a-56, as amended by Section 5 of Public Act 89-253, 46a-68e and 46a-68f; the Town agrees to provide the Commission of Human Rights and Opportunities with such information requested by the Commission, permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Town as related to the provisions of this section and section 46a-56. If the contract is a public works contract, the Town agrees and warrants that he will make good faith efforts to employ minority business enterprises as subgrantees and suppliers of materials on such public works project.

Determination of the Town’s good faith efforts shall include but shall not be limited to the following factors: The Town’s employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

The Town shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

The Town shall include the provisions of subsection (b) of this section in every subcontract or purchase order entered into in order to fulfill any obligation or a contract with the State and such provisions shall be binding on a sub-grantee, vendor or manufacturer, unless exempted by regulations or orders of the Commission. The Town shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for non-compliance in accordance with Conn. Gen. Stat. Sect. 47a-56, as amended by Section 5 of Public Act 89-253; provided, if such Town becomes involved in, or is threatened with litigation with a sub-grantee or vendor as a result of such direction by the Commission, the Town may request the State of Connecticut to enter into any such litigation prior thereto to protect the interest of the State and the State may so enter.

The Town agrees to comply with the regulations referred to in this section as they exist on the date of this contract and as they may be adopted or amended from time to time during the term of this contract and any amendments thereto.

Pursuant to Public Act 89-227, as amended, as of January 1, 1991, no agency of the State of Connecticut may purchase new products packaged in or composed in whole or part of polystyrene foam if such foam is manufactured using chlorofluorocarbons (CFC). Manufacturers are required by the Act to provide information regarding the CFC content of polystyrene foam used in such products or packaging to any person selling the product who requests such information. By submitting an offer to sell to or accepting an

order from the State of Connecticut the vendor certifies that no CFC are used in the manufacture of polystyrene foam contained in such products or packaging.

17. NON-DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION

- (1) The Town agrees warrants that in the performance of the contract such Town will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation.
- (2) The Town agrees to provide each labor union or representative of workers with which such Town has a collective bargaining agreement or other contract or understanding and each vendor with such Town has a contract or understanding and each vendor with which such Town or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Town's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
- (3) The Town agrees to comply with each provision of this Section and Sections 46a-68f of the General Statutes and with each regulation or relevant order issued by said Commission pursuant to Sections 46a-56, 46a-68e and 46a-68f of the General Statutes;
- (4) The Town agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Town as related to the provisions of this section and Section 46a-56 of the General Statutes.
- (5) The Town shall include the provisions of paragraph (1) of this addendum in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a sub-grantee, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Town shall take such actions with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for non-compliance in accordance with Section 46a-56 of the General Statutes; provided, if such Town becomes involved in, or is threatened with, litigation with a sub-grantee or vendor as a result of such direction by the Commission, the Town may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the dates written below:

THE DEPARTMENT OF EMERGENCY MANAGEMENT & HOMELAND SECURITY

By: _____ Date: _____
James M. Thomas,
Commissioner of Emergency Management & Homeland Security
Duly Authorized

THE TOWN OF _____

By: _____ Date: _____
Its Chief Executive Officer
Duly Authorized

ORGANIZATION _____

By: _____ Date: _____
Its Officer
Duly Authorized

COORDINATING RPO/CITY [INSERT NAME HERE]

By: _____ Date: _____
Its Duly Authorized Representative

REGION ____ REGIONAL EMERGENCY PLANNING TEAM

By: _____ Date: _____
Its Chair
Duly Authorized

Exhibit A