

To ensure successful implementation of the Executive Order, state agencies, independent authorities and colleges and universities must forward an Initial Project Workforce Report (AA 201) for any projects funded with ARRA money to the Division of Public Contracts EEO Compliance immediately upon notification of award but prior to execution of the contract.

If you have any questions or require additional information, please contact the Division at 609-292-5473.

EXHIBIT B
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)
N.J.A.C 17:27

CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor or workers' representative of the contractor's commitments under this act and shall post copies of this notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq, as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C 17:27-7.3; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A,B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by the union which provides evidence, in accordance with standards prescribed by a Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27- 7.3. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended

from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor subcontractor agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.

(B) If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals.

- (1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C 17:27-5.3, of its workforce needs, and request referral of minority and women workers.
- (2) To notify any minority and woman workers who have been listed with it as awaiting available vacancies.
- (3) Prior to commencement of work, to request that the local construction trade union refer minority and woman workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
- (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement and arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;
- (5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statues and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off by the contractor or any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A 10:5-31 et. Seq.;
- (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor.

- I. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral

agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

II. If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested women or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

III. If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or of the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its file, and send a copy to the public agency compliance officer and to the Division

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or hiring hall agreement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an official project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such

information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

Pursuant to New Jersey Executive Order No. 151, of Friday, August 28, 2009 contractors should be advised of the following:

It is the policy of the City of Hoboken that its contracts should create a workforce that reflects the diversity of the State of New Jersey Therefore, contractors engaged by the City of Hoboken to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women

The contractor must demonstrate to the City of Hoboken's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the City of Hoboken's contract with the contractor. Payment may be withheld from a contractor's for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but not limited to:

- 6.) The Contractor shall recruit prospective employees through the State Job bank website , managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov/JobCentralNJ>;
- 7.) The contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including specific numbers of minorities and women.
- 8.) The contractor shall actively solicit and shall provide the City of Hoboken with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electric media; and
- 9.) The Contractor shall provide evidence of efforts described at 2 above to the City of Hoboken no less frequently than once every 12 months
- 10.)The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27

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If you have any questions or require additional information, please contact the Division at 609-292-5473.



CERTIFICATE OF LIABILITY INSURANCE

REVISED

DATE (MM/DD/YYYY)

6/10/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER C&H AGENCY 763 Riverview Drive P.O. Box 324 Totowa NJ 07511		CONTACT NAME: Angela McNab PHONE (A/C, No, Ext): (973) 890-0900 FAX (A/C, No): (973) 812-9860 E-MAIL: amcnab@chagency.com ADDRESS:	
		INSURER(S) AFFORDING COVERAGE INSURER A: American Family Home Insurance Co. INSURER B: Torus National Ins. Co. (Star Stone) INSURER C: United States Fire Insurance Co. INSURER D: INSURER E: INSURER F:	NAIC #

COVERAGES **CERTIFICATE NUMBER:** 16-17 GL, A, U, WC **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBROGATION	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Included <input checked="" type="checkbox"/> Contractual Incl. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		88A5GL0000264	4/1/2016	4/1/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		88A5CA0000124	4/1/2016	4/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		49212D161ALI	4/1/2016	4/1/2017	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	408-728298-6	4/1/2016	4/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Hoboken Southwest Block 12 Park.
 City of Hoboken, its officers, agents and employees; Starr Whitehouse Landscape Architects and Planners PLLC; The State of New Jersey, its officers, agencies, and employees are included as Additional Insureds with respect to this project, but only if required by written and signed contract.

CERTIFICATE HOLDER City of Hoboken 95 Washington Street Hoboken, NJ 07030	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Robert Culnen/JENN

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CERTIFICATE OF LIABILITY INSURANCE

REVISED

DATE (MM/DD/YYYY)

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IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER C&H AGENCY 783 Riverview Drive P.O. Box 324 Totowa NJ 07511	CONTACT NAME: Angela McNab PHONE (A/C, No. Ext): (973) 890-0900 FAX (A/C, No): (973) 812-9860 E-MAIL ADDRESS: amcnab@chagency.com													
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A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		88A5GL0000264	4/1/2016	4/1/2017	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
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	<input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
B	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR		49212D161ALI	4/1/2016	4/1/2017	EACH OCCURRENCE \$ 10,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB CLAIMS-MADE					AGGREGATE \$ 10,000,000
	DED RETENTION \$					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	408-728298-6	4/1/2016	4/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
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	AUTHORIZED REPRESENTATIVE Robert Culnen/JENN

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, the Undersigned

Flanagan's Contracting Group, Inc.

(Here insert the full name of CONTRACTOR)

Is PRINCIPAL, and

Fidelity and Deposit Company of Maryland, 1400 American Lane, Schaumburg, IL, 60196

(Here insert the full name of SURETY)

a corporation organized and existing under the laws of the State of MD

as SURETY are held and firmly bound unto the

City of Hoboken, as OBLIGEE,

for the use and benefit of CLAIMANTS as hereinbelow defined, in the full and just several sums of

Four Million Nine Hundred Seven Thousand Five Hundred Sixty Seven Dollars and 50/100

(Dollars) (\$ 4,907,567.50) lawful money of the United States of America, to be paid to the said OBLIGEE, or its attorney, successors, or assigns, to the payment of which sums well and truly to be made, the said PRINCIPAL and SURETY bind themselves, their heirs, administrators, executor, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS, said PRINCIPAL has entered into a certain CONTRACT with said OBLIGEE, dated

June , 20 16, (hereinafter called the CONTRACT) for

Hoboken Southwest Block 12 Park

which CONTRACT and the CONTRACT DOCUMENTS for said work shall be deemed a part hereof as fully as if set forth herein.

NOW, THEREFORE, the condition of this BOND shall be such that:

If the PRINCIPAL shall well, truly and faithfully comply with and perform the CONTRACT in accordance with the CONTRACT DOCUMENTS, at the time and in the manner provided in the CONTRACT and in the CONTRACT DOCUMENTS, and if the PRINCIPAL shall satisfy all claims and demands incurred in or related to the performance of the CONTRACT by the PRINCIPAL or growing out of the performance of the CONTRACT by the PRINCIPAL and if the PRINCIPAL shall indemnify completely and shall save harmless the OBLIGEE from all costs and damages which the OBLIGEE may sustain or suffer by reason of the failure of the PRINCIPAL to do so, and if the PRINCIPAL shall reimburse completely and shall pay to the OBLIGEE any and all costs and expenses which the OBLIGEE may incur by reason of any such default or failure of the PRINCIPAL, then this bond shall be void; otherwise, this BOND shall be and shall remain in force and effect.

The PRINCIPAL and SURETY agree that any alterations, changes or additions to the CONTRACT DOCUMENTS, and/or any alterations, changes or additions to the work to be performed under the CONTRACT in accordance with CONTRACT DOCUMENTS, and/or any alterations, changes or additions to the CONTRACT, and/or any giving by the OBLIGEE of any extensions of time for the performance of the CONTRACT in accordance with the CONTRACT DOCUMENTS and/or any act of forbearance of either the PRINCIPAL or the OBLIGEE toward the other with respect to the CONTRACT DOCUMENTS and the CONTRACT and/or the reduction of any percentage to be retained by the OBLIGEE as permitted by the CONTRACT DOCUMENTS and by the CONTRACT, shall not release, in any manner whatsoever, the PRINCIPAL and the SURETY, or either of them, or their heirs, executors, administrators, successors and assigns, from liability under the BOND; and the SURETY, for value received does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

If the OWNER and the PRINCIPAL agree to arbitration then the SURETY shall become a party thereto and be bound by the results of the arbitration.

IN WITNESS WHEREOF, the PRINCIPAL and SURETY have executed this instrument under their several seals this 10th day of June, 2016, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its proper officers, pursuant to authority of its governing body.

ON BEHALF OF INDIVIDUAL OR PARTNERSHIP

(Individual or Partnership Principal)

(Address)

Witness: _____

(Individual or Partnership Principal)

(Address)

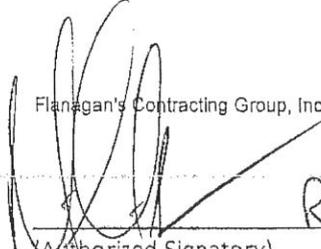
Witness: _____

ON BEHALF OF CORPORATION

Attest:
(affix corporate seal)



Robert P. Flanagan


Flanagan's Contracting Group, Inc.

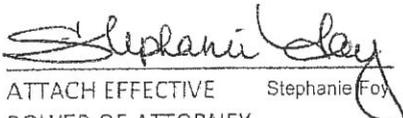
Robert J. Flanagan
(Authorized Signatory)

90 Old Camplain Road, Hillsborough, NJ 08844

(Business Address)

ON BEHALF OF SURETY

Attest:

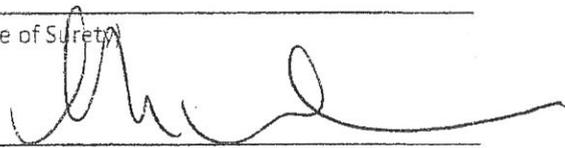


ATTACH EFFECTIVE Stephanie Foy
POWER OF ATTORNEY

Fidelity and Deposit Company of Maryland

(Name of Surety)

By



Lisa Nosal, Atty-In-Fact

LABOR AND MATERIALS PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

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(Here insert the full name of CONTRACTOR)

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June, 2016, (hereinafter called the CONTRACT) for

Hoboken Southwest Block 12 Park

which CONTRACT and the CONTRACT DOCUMENTS for said work shall be deemed a part hereof as fully as if set forth herein,

NOW, THEREFORE, the condition of this BOND shall be such that:

If the PRINCIPAL shall promptly make payment to all CLAIMANTS as hereinafter defined, for all labor and material used or reasonably required for use in the Performance of the CONTRACT, then this obligation shall be void; otherwise it shall remain in full force and effect, subject however, to the following conditions:

- 1) A CLAIMANT is defined as one having a direct contract with the PRINCIPAL or with a SUBCONTRACTOR of the PRINCIPAL for labor, material or both used or reasonably required for use in the performance of the CONTRACT, labor, and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the CONTRACT.
- 2) The above named PRINCIPAL and SURETY hereby jointly and severally agree with the Owner that every CLAIMANT as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such CLAIMANT'S work or labor was done or performed, or materials were furnished by such CLAIMANT, may sue on this BOND for the use of such CLAIMANT, prosecute the suit to final judgment for such sums as may be justly due CLAIMANT, and have executed thereon. The OWNER shall not be liable for the payment of any costs or expenses of any such suit.
- 3) No suit or action shall be commenced hereunder by any CLAIMANT:
 - a) Unless CLAIMANT, other than one having a direct CONTRACT with the PRINCIPAL, shall have given written notice to any of the following: The PRINCIPAL, the OWNER, or the SURETY above named, within ninety (90) days after such CLAIMANT did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.
 - b) After the expiration of one (1) year following the date on which PRINCIPAL ceased work on said CONTRACT, it being understood, however, that if any limitation embodied in this BOND is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - c) Other than in a state court or competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
- 4) The amount of this BOND shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by SURETY of mechanic's liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this BOND.

- 5) The PRINCIPAL and the SURETY agree that any alterations, changes or additions to the CONTRACT DOCUMENTS, and/or any alterations, changes or additions to the work to be performed under the CONTRACT in accordance with CONTRACT DOCUMENTS, and/or any alterations, changes or additions to the CONTRACT, and/or any giving by the OBLIGEE of any extensions of time for the performance of the CONTRACT in accordance with the CONTRACT DOCUMENTS and/or any act of forbearance of either the PRINCIPAL or the OBLIGEE toward the other with respect to the CONTRACT DOCUMENTS and the CONTRACT and/or reduction of any percentage to be retained by the OBLIGEE as permitted by the CONTRACT DOCUMENTS and by the CONTRACT, shall not release, in any manner whatsoever, the PRINCIPAL and the SURETY, or either of them, or their heirs, executors, administrators, successors and assigns, from liability under the BOND; and the SURETY, for value received does not waive notice of any such alterations, changes, additions, extensions of time, act of forbearance and/or reduction of retained percentage.

- 6) If the OWNER and the PRINCIPAL agree to arbitration then the SURETY shall become a party thereto and be bound by the results of the arbitration.

IN WITNESS WHEREOF, the PRINCIPAL and SURETY have executed this instrument under their several seals this 10th day of June, 2016, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its proper officers, pursuant to authority of its governing body.

ON BEHALF OF INDIVIDUAL OR PARTNERSHIP

(Individual or Partnership Principal)

(Address)

Witness: _____

(Individual or Partnership Principal)

(Address)

Witness: _____

ON BEHALF OF CORPORATION

Attest:
(affix corporate seal)



Roger P. Flanagan


Flanagan's Contracting Group, Inc.

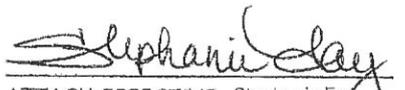
Robert J. Flanagan
(Authorized Signatory)

90 Old Camplain Road, Hillsborough, NJ 08844

(Business Address)

ON BEHALF OF SURETY

Attest:

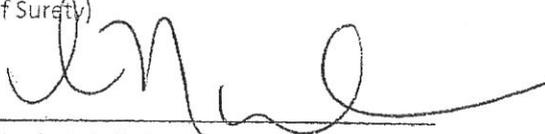


ATTACH EFFECTIVE Stephanie Fox
POWER OF ATTORNEY

Fidelity and Deposit Company of Maryland

(Name of Surety)

By



Lisa Nosal, Atty-in-Fact

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **MICHAEL BOND, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Robert E. CULNEN, Louis A. VLAHAKES and Lisa NOSAL, all of Totowa, New Jersey, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 15th day of January, A.D. 2016.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: *Eric D. Barnes*
Secretary
Eric D. Barnes

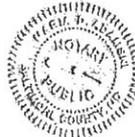
Michael Bond
Vice President
Michael Bond

State of Maryland
County of Baltimore

On this 15th day of January, A.D. 2016, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **MICHAEL BOND, Vice President, and ERIC D. BARNES, Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Maria D. Adamski



Maria D. Adamski, Notary Public
My Commission Expires: July 8, 2019

FIDELITY AND DEPOSIT COMPANY

OF MARYLAND

600 Red Brook Blvd., Suite 600, Owings Mills, MD 21117

Statement of Financial Condition

As Of December 31, 2015

ASSETS

Bonds	\$ 142,878,497
Stocks	22,315,096
Cash and Short Term Investments.....	337,835
Reinsurance Recoverable	24,731,651
Other Accounts Receivable.....	19,935,844
TOTAL ADMITTED ASSETS	\$ 210,198,923

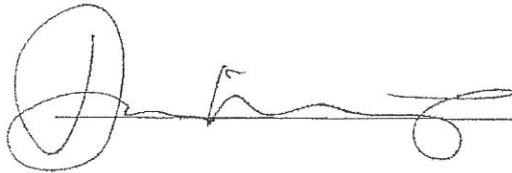
LIABILITIES, SURPLUS AND OTHER FUNDS

Reserve for Taxes and Expenses	\$ 46,436
Ceded Reinsurance Premiums Payable	40,456,309
Securities Lending Collateral Liability	0
TOTAL LIABILITIES	\$ 40,502,745
Capital Stock, Paid Up	\$ 5,000,000
Surplus	164,696,178
Surplus as regards Policyholders.....	169,696,178
TOTAL	\$ 210,198,923

Securities carried at \$57,996,983 in the above statement are deposited with various states as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of market quotations for all bonds and stocks owned, the Company's total admitted assets at December 31, 2015 would be \$212,137,795 and surplus as regards policyholders \$171,635,049.

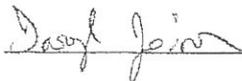
I, DENNIS F. KERRIGAN, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2015.



 Corporate Secretary

State of Illinois }
 City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 15th day of March, 2016.



 Notary Public



SURETY DISCLOSURE STATEMENT AND CERTIFICATION

pursuant to N.J.S.A. 2A:44-143

(for use when surety(ies) have a certificate from U.S. Secretary of the Treasury in accordance with 31 U.S.C. §9305)

Fidelity and Deposit Company of Maryland,

surety on the attached bond, hereby certifies the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital and surplus, as determined in accordance with the applicable laws of this State, of the surety participating in the issuance of the attached bond is in the following amounts as of the calendar year ended December 31, 2015 which amounts have been certified on a Certification by PricewaterhouseCoopers, LLP and are included in the Annual Statement on file with the New Jersey Department of Insurance, 20 West State Street CN-325, Trenton, New Jersey 08625-0325.

Fidelity and Deposit Company of Maryland, \$169,696,178

With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. §9305, the underwriting limitation established therein on July 1, 2015 is as follows:

Fidelity and Deposit Company of Maryland, \$14,666,000

The amount of the bond to which the statement and certification is attached is \$4,907,567.50.

(1) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in item (3) above, then for each such contract of reinsurance:

(a) The name and address of each such insurer under that contract and the amount of the reinsurer's participation in the contract is as follows:

and;

(b) Each surety that is party to any such contract of reinsurance certifies that each insurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L. 1993, c.243(C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

I, Michael P. Bond, as Vice President for Fidelity and Deposit, a corporation domiciled in Maryland, DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements made by me are false, this bond is VOIDABLE.



Michael P. Bond, Vice President

Dated: June 10, 2016

Effective: July 1, 2015

TRUE COPY OF A RESOLUTION ADOPTED BY
COUNCIL OF THE CITY OF HOBOKEN, N.J.
MEETING HELD ON:

MAY 18 2016

James J. Sorena

CITY OF HOBOKEN
RESOLUTION NO.:

Introduced by
Seconded by:

[Signature]

~~RESOLUTION AWARDING~~ AWARDING A CONTRACT TO FLANAGAN'S CONSTRUCTING GROUP, INC. FOR THE PROVISIONS OF HOBOKEN SOUTHWEST BLOCK 12 PARK IN ACCORDANCE WITH THE CITY'S BID NO. 16-03 IN THE TOTAL NOT TO EXCEED AMOUNT OF \$4,907,567.50

WHEREAS, bids were received for Hoboken Southwest Block 12 Park project, as specified in Bid Number 16 - 03; and,

WHEREAS, two (2) bids were received, the being:

<u>VENDOR</u>	<u>TOTAL BID PRICE</u>
1. Flanagan's Contracting Group, Inc. 90 Old Camplain Road Hillsborough, NJ 08844	\$4,907,567.50
2. Justinian Builders, Inc. 338 7 th Street, Ground Floor Jersey City, NJ 07302	\$5,376,474.65

WHEREAS, pursuant to the recommendation of the City Architect (attached hereto) the City wishes to contract for the services specified in Bid No. 16 - 03, and Flanagan's Contracting Group, Inc. submitted the lowest, responsible, and responsive bid in the amount of \$4,907,567.50; and,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Hoboken as follows:

- A. This resolution awards a contract, in a form supplied by the City to the contractor and engineer, to Flanagan's Contracting Group, Inc. for Bid No. 16 - 03, in the total amount of Four Million Nine Hundred Seven Thousand Five Hundred Sixty Seven Dollars and Fifty Cents (\$4,907,567.50) for Hoboken Southwest Block 12 Park Project; and said contract shall be to Flanagan's Contracting Group, Inc. in accordance with the specifications as set forth in Bid No. 16 - 03.
- B. If the contract, as provided by the City of Hoboken, is not executed by the vendor within 21 days of execution of this award, the City may cancel this award and rebid the project.
- C. The contract shall be in accordance with the terms of the specifications and the vendor's corresponding bid proposal documents. No exceptions were noted in the City's Architect's recommendations; therefore, none will be accepted in performing obligations under the bid.

- D. Any change orders required shall be subject to formal City Council authorization, and the City shall not be held liable for any amounts above the within contracted amounts unless/until same is authorized and appropriated by formal resolution of the City Council.
- E. Bid No. 16-03, and the contract entered into thereunder, is subject to the liquidated damages clause, the performance bond, and the environmental bond obligations defined within the language of the bid documents, and the contract awarded herein under Bid No. 16-03 shall be subject to said obligations as well.
- F. The Mayor or her authorized agent is hereby sanctioned to enter into the herein awarded contract with the vendor for said purchase pursuant to Bid No. 16-03.
- G. Prior to execution of the contract awarded and defined hereunder, and within twenty (20) days of adoption of this resolution, the City of Hoboken shall provide a copy of this resolution along with the bid specifications, the bid proposal of Flanagan's Constructing Group, Inc., and a draft of the City's form contract to the Office of the State Comptroller of the State of New Jersey for review. The Mayor's authority to execute the agreement hereunder shall not be initiated until the Office of the State Comptroller acknowledges receipt of same.
- H. This resolution shall take effect immediately upon passage.

Meeting date: May 18, 2016

APPROVED:

Quentin Wiest
 Quentin Wiest
 Business Administrator

APPROVED AS TO FORM:

Adusia Proco
 Acting Corporation Counsel, Esq.

Councilperson	Yea	Nay	Abstain/Present	Absent
Ravinder Bhalla	/			
Peter Cunningham	/			
Michael Defusco	/			
James Doyle	/			
Tiffanie Fisher				✓
David Mello	/			
Ruben Ramos, Jr.	/			
Michael Russo	/			
President Jennifer Giattino	/			

F2

INTRODUCED BY: AP
SECONDED BY: AR

CITY OF HOBOKEN
RESOLUTION NO. _____

**RESOLUTION INSERTING A SPECIAL ITEM OF REVENUE INTO THE
CY2016 MUNICIPAL BUDGET TO INCLUDE THE \$67,713.02
RECEIVED PURSUANT TO THE 2016 SUMMER FOOD SERVICE
PROGRAM**

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by any public or private funding source, and the amount thereof was not determined at the time of the adoption of the budget; and,

WHEREAS, said Director may also approve the insertion of an item of appropriation for an equal amount; and,

WHEREAS, the City of Hoboken has received notice of an award of \$67,713.02 from the State of New Jersey Department of Agriculture Division of Food & Nutrition for the 2016 Summer Food Service Program (see attached Letter of Award); and wishes to amend its CY2016 budget to include this amount as revenue and to include an appropriation item for said amount.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hoboken hereby requests that the Director of the Division of Local Government Services approve the insertion of an item of revenue in the CY2016 budget in the amount of \$67,713.02. This is now available as revenue from:

Miscellaneous Revenues:

Special Items of General Revenue Anticipated
With Prior Written Consent of the Director of the
Division of Local Government Services:

State and Federal Revenues Off-set with Appropriations:

Department of Agriculture
Summer Food Service Program \$67,713.02

BE IT FURTHER RESOLVED by the City Council of the City of Hoboken that the sum of \$67,713.02. is hereby appropriated under the caption of:

General Appropriations:

(a) Operations Excluded from CAPS
State and Federal Programs Off-Set by
Revenues:

Department of Agriculture

Summer Food Service Program

\$67,713.02

BE IT FURTHER RESOLVED, that the City Clerk will forward two (2) certified copies of this Resolution to the Director of Local Government Services for approval.

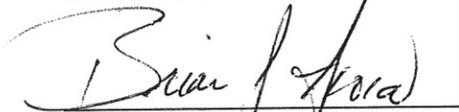
MEETING DATE: September 7, 2016

Councilperson	Yea	Nay	Abstain/Present	Absent
Ravi Bhalla	/			
Peter Cunningham	/			
Michael DeFusco	/			
James Doyle	/			
Tiffany Fisher	/			
David Mello	/			
Ruben Ramos, Jr.	/			
Michael Russo	/			
Jen Giattino, Council President	/			

APPROVED BY:

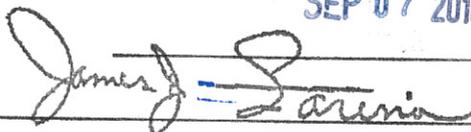

QUENTIN WIEST
BUSINESS ADMINISTRATOR

APPROVED AS TO FORM:


BRIAN ALOIA, ESQ.
CORPORATION COUNSEL

A TRUE COPY OF A RESOLUTION ADOPTED BY
THE COUNCIL OF THE CITY OF HOBOKEN, N.J.
AT A MEETING HELD ON:

SEP 07 2016


CITY CLERK



State of New Jersey

DEPARTMENT OF AGRICULTURE
Division of Food & Nutrition
PO Box 334
TRENTON NJ 08625-0334

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

DOUGLAS H. FISHER
Secretary

August 18, 2016

Mayor Dawn Zimmer
City of Hoboken
94 Washington Street
Hoboken, NJ 07030

Dear Mayor Zimmer:

Agreement #09-0089

Your 2016 Summer Food Service Program application has been approved. The current amount of 2016 funding approved for your organization is \$67,713.02. I have enclosed a copy of your approved Sponsor Management Plan, Schedule C (Menu), signed Agreement, Site Information Sheet(s) if applicable and the computerized Schedule A. Please note, this year your Schedule A for all area eligible sites (site code beginning with "A") lists the site eligibility year as 2016. Once a site establishes area eligibility, the eligibility is in effect for a period of five years. Thereafter, site eligibility redetermination will occur for each site every 5 years.

For all enrolled sites, (site code beginning with "E") you will continue to be required to submit annual documentation for site eligibility determination each year. (eligibility year listed on Schedule A, as "NA"-not applicable.)

All official correspondence will be sent to the authorized sponsor representative at the sponsor address identified above.

A second copy of all correspondence will be sent to the Program Director identified at the program address specified in the Sponsor Management Plan if different than authorized sponsor representative.

All Summer Food Service Program reimbursements will be issued to the agency name and address identified above. The check stubs will have "SFSP" coded on them to identify the reimbursement as a Summer Food Service Program payments.



If you do not wish to have Summer Food Service Program reimbursement payments issued to the agency name and/or address identified above, please contact your program specialist immediately to discuss proper procedures for modification.

Under the State of New Jersey Comprehensive Financial System (NJCFS) Summer Food Service Program reimbursement payments can only be issued to agencies who have a valid vendor identification number on file with the State Department of Treasury. The State Department of Treasury agency name and address on file for the vendor identification number you provided (I.D. #V22600199300) is identical to your approved sponsor name and address for the Summer Food Service Program identified above.

A supply of pre-slugged reimbursement vouchers will be sent to you under separate cover by the end of June. In order to validly claim reimbursement in 2016, you must use the name, address and agreement number typed above when you prepare your Summer Food Service Program reimbursement voucher. If the name or address of your agency changes during the 2016 season, you must notify the Summer Food Service Program office in writing within ten days of the change on agency letterhead. You will then receive a revised Schedule A which must be attached to your 2016 Agreement.

Be sure to mail all correspondence to:

Summer Food Service Program
State of New Jersey
Department of Agriculture
P.O. Box 334
Trenton, New Jersey 08625-0334

**If documents are being hand delivered, the specific street address and floor must be used instead: 22 South Clinton Avenue, Building 4, 3rd Floor, Trenton, NJ 08609.*

Bid documents submitted to the state agency for review are approved as to form and content. Please be advised that a state agency representative may be present at your bid opening scheduled for May 18, 2016. The approval of this bid package is granted with the understanding that any additions, deletions or changes made without approval of the state agency can invalidate your bid opening proceedings.

Instructions regarding enrollment documentation, submission of reimbursement vouchers and procurement documentation will be sent to you under separate cover if applicable.

Please contact your Nutrition Program Specialist regarding program operation issues at (609) 292-4498. Payment questions can be directed to my attention at that same number. We look forward to working with you during the summer months.

Sincerely,

Handwritten signature of Stephanie Sutton-Page in cursive script.

Stephanie Sutton-Page
Coordinator
Summer Food Service Program

Cc: Mr. David Calamoneri, Management Specialist

SSP/nc/F-12
Enclosure

INTRODUCED BY: _____
 SECONDED BY: _____

F3

**CITY OF HOBOKEN
 RESOLUTION NO. : _____**

**RESOLUTION TO REFUND HANDICAPPED PARKING APPLICATION
 FEE TO APPLICANT VIRGINIA M. RECKHOW IN THE AMOUNT OF
 \$125.00**

WHEREAS, the Subcommittee for Handicapped Parking denied approval of the application of the below listed individual and therefore the fee is to be refunded pursuant to Hoboken Code § 192-1(F).

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Hoboken, that a warrant be drawn on the City Treasury to the order of the following name as reimbursement for the handicapped parking application fee submitted:

NAME	ADDRESS	AMOUNT
Virginia M. Reckhow	460 8 th Street	\$125.00

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be provided to Mayor Dawn Zimmer, Corporation Counsel, and the CFO for action in accordance therewith, including the processing of a warrant for payment to the above named individual, and to take any other actions necessary to complete and realize the intent and purpose of this resolution; and,

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

Meeting date: September 7, 2016

A TRUE COPY OF A RESOLUTION ADOPTED BY
 THE COUNCIL OF THE CITY OF HOBOKEN, N.J.

Councilperson	Yea	Nay	Abstain	Present	Absent
Ravinder Bhalla	/				
Peter Cunningham	/				
Michael DeFusco	/				
James Doyle	/				
Tiffanie Fisher	/				
David Mello	/				
Ruben Ramos, Jr.	/				
Michael Russo	/				
President Jennifer Giattino	/				

AT A MEETING HELD ON:

SEP 07 2016

James J. Saracino

CITY CLERK

APPROVED:

Quentin Wiest
 QUENTIN WIEST
 BUSINESS ADMINISTRATOR

APPROVED AS TO FORM:

Brian Aloia
 BRIAN ALOIA, ESQ.
 CORPORATION COUNSEL

INTRODUCED BY: _____
 SECONDED BY: _____

[Handwritten signature]

**CITY OF HOBOKEN
 RESOLUTION NO. : _____**

**RESOLUTION TO REFUND AN OVERPAYMENT OF THE ANNUAL
 RENT REGISTRATION FEE FOR THE YEARS 2015 AND 2016 TO
 DARREN PINCUS IN THE TOTAL AMOUNT OF \$50.00**

WHEREAS, the Rent Leveling and Stabilization Office has requested the reimbursement of overpayment of the rent registration fee paid by Darren Pincus, in the amount of \$25.00 per year, for the years 2015 and 2016, as detailed in the attached memorandum from Rent Regulation Officer Suzanne Hetman to City of Hoboken CFO George DeStefano.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hoboken, that a warrant be drawn on the City Treasury to the order of the following name for the sum so stated, as reimbursement for the rent registration fee the individual submitted:

NAME	ADDRESS	AMOUNT
Darren Pincus	114 Foothill Rd Flemington NJ 08822	\$50.00

BE IT FURTHER RESOLVED, that a certified copy of this resolution shall be provided to Mayor Dawn Zimmer, Corporation Counsel, and the CFO for action, including a warrant for payment to the above mentioned individual, in accordance therewith and to take any other actions necessary to complete and realize the intent and purpose of this resolution; and,

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

Meeting date: September 7, 2016

Councilperson	Yea	Nay	Abstain/Present	Absent
Ravinder Bhalla	/			
Peter Cunningham	/			
Michael Defusco	/			
James Doyle	/			
Tiffanie Fisher	/			
David Mello	/			
Ruben Ramos, Jr.	/			
Michael Russo	/			
President Jennifer Giattino	/			

A TRUE COPY OF A RESOLUTION ADOPTED BY
 THE COUNCIL OF THE CITY OF HOBOKEN, N.J.
 AT A MEETING HELD ON:

SEP 07 2016

[Signature]
 CITY CLERK

APPROVED:
[Signature]
 QUENTIN WIEST
 BUSINESS ADMINISTRATOR

APPROVED AS TO FORM:
[Signature]
 BRIAN ALIQA, ESQ.
 CORPORATION COUNSEL

City Hall
94 Washington St.
Hoboken, NJ 07030
Phone 201-420-2396
Fax 201-420-5644

**RENT LEVELING &
STABILIZATION
OFFICE
94 Washington St.
Hoboken, NJ 07030
201-420-2396**

Memo

To: George DeStefano
Finance Department

From: Suzanne Hetman, Rent Regulation Officer

Date: August 16, 2016

Re: Reimbursement
Darren Pincus

I am writing to request a reimbursement check in the amount of \$50.00 be issued to Darren Pincus, 114 Foothill Rd., Flemington, NJ 08822.

Mr. Pincus overpaid his 2015 annual registration and 2016 annual registration. Please reimburse him for the following overpayments:

Check #2840 – Receipt #34874 - Paid on 8/17/15

Check #2861 – Receipt #36715 - Paid on 8/5/16

The Rent Leveling & Stabilization receipts are attached for your review.

Please feel free to contact me if you should have any questions.

CITY OF HOBOKEN
RENT LEVELING AND STABILIZATION OFFICE

Payment Summary Report
Pay Date FROM 08/17/2015 TO 08/17/2015

Registration #	Street#	Prop. Street	Type	(R)Year	Total Paid	Pay Date	Check#
34873	85	JEFFERSON STREET	2015 REGISTRATION	2015	25.00	8/17/2015	3696
34874	902	WILLOW AVENUE	2015 REGISTRATION	2015	25.00	8/17/2015	2840
34875	614	GRAND STREET	2015 REGISTRATION	2015	25.00	8/17/2015	151
34876	300	NEWARK STREET	2015 REGISTRATION	2015	25.00	8/17/2015	1295
34877	200	HUDSON STREET	2015 REGISTRATION	2015	25.00	8/17/2015	848
34878	711	WILLOW AVENUE	2015 REGISTRATION	2015	25.00	8/17/2015	2132
34879	511	WILLOW AVENUE	2015 REGISTRATION	2015	25.00	8/17/2015	0002
34880	511	WILLOW AVENUE	UPDATE	0	10.00	8/17/2015	0002
34881	63	JEFFERSON STREET	2015 REGISTRATION	2015	25.00	8/17/2015	MO
34882	63	JEFFERSON STREET	UPDATE	0	10.00	8/17/2015	MO
34883	414	MADISON STREET	2015 REGISTRATION	2015	25.00	8/17/2015	1023
34884	415	NEWARK STREET	2015 REGISTRATION	2015	25.00	8/17/2015	1322
34885	501	ADAMS STREET	2015 REGISTRATION	2015	25.00	8/17/2015	184
34886	1300	GRAND STREET	2015 REGISTRATION	2015	25.00	8/17/2015	195
34887	228	BLOOMFIELD STREET	2015 REGISTRATION	2015	25.00	8/17/2015	1134
34888	812	HUDSON STREET	2015 REGISTRATION	2015	25.00	8/17/2015	823
34889	224	HUDSON STREET	2015 REGISTRATION	2015	25.00	8/17/2015	184
34890	706	WILLOW AVE	2015 REGISTRATION	2015	25.00	8/17/2015	183
34891	1000	HUDSON STREET	2015 REGISTRATION	2015	25.00	8/17/2015	196
34892	258	SECOND STREET	UPDATE	0	10.00	8/17/2015	2248
34893	93	GARDEN STREET	2015 REGISTRATION	2015	25.00	8/17/2015	1973
34894	1319	WASHINGTON STREET	2015 REGISTRATION	2015	25.00	8/17/2015	1723
34895	308	GARDEN STREET	2015 REGISTRATION	2015	25.00	8/17/2015	164
34896	350	SEVENTH STREET	2015 REGISTRATION	2015	25.00	8/17/2015	1006
34897	328	ADAMS STREET	2015 REGISTRATION	2015	25.00	8/17/2015	2165
34898	330	ADAMS STREET	2015 REGISTRATION	2015	25.00	8/17/2015	2165
34899	415	NEWARK STREET	2015 REGISTRATION	2015	25.00	8/17/2015	1009
34900	416	BLOOMFIELD STREET	2015 REGISTRATION	2015	25.00	8/17/2015	242
34901	402	NINTH STREET	2015 REGISTRATION	2015	25.00	8/17/2015	0312
Grand Total	29				680.00		

**RENT LEVELING and STABILIZATION OFFICE
CITY OF HOBOKEN, NJ 07030**

CITY OF HOBOKEN
MUNICIPAL BUILDING
HOBOKEN NJ



Transaction #: 34874
Registration Year: 2015
Issue Date: 8/17/2015

Block : 161 Lot : 31

Property Detail

Type: 2
PINCUS, DARREN
902 WILLOW AVENUE

Fee : 25.00
Paid: 25.00
Total Due: 0.00

Owner Detail

PINCUS, DARREN
114 FOOTHILL RD
FLEMINGTON NJ 08822

Issue By : SD
Receipt #: 34874
Check #: 2840

Suzanne Hetman
RENT OFFICER

**RENT LEVELING and STABILIZATION OFFICE
CITY OF HOBOKEN, NJ 07030**

CITY OF HOBOKEN
MUNICIPAL BUILDING
HOBOKEN NJ



Transaction #: 34874
Registration Year: 2015
Issue Date: 8/17/2015

Block :161 Lot : 31

Property Detail

CONDO
PINCUS, DARREN
902 WILLOW AVENUE

#4B.
reimbursed

Fee : 25.00
Paid: 25.00
Total Due: 0.00

Owner Detail

PINCUS, DARREN
114 FOOTHILL RD
FLEMINGTON NJ 08822

Issue By : SD
Receipt #: 34874
Check #: 2840

Suzanne Hetman
RENT OFFICER

RENT LEVELING AND STABILIZATION OFFICE
 Payment Summary Report
 Reg. Date FROM 08/05/2016 TO 08/05/2016

Registration #	Street#	Prop. Street	Type	(R)Year	Total Paid	Pay Date	Check#
36714	725	JEFFERSON STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	1555
36715	902	WILLOW AVENUE	2016 REGISTRATION	2016	25.00	8/ 5/2016	2861
36716	328	BLOOMFIELD STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	193
36717	222	CLINTON STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	0152
36718	320	MADISON STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	330
36719	831	CLINTON STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	3329
36720	1000	HUDSON STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	2311
36721	1300	GRAND STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	045
36722	356	FIRST STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	1356
36723	920	JEFFERSON STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	780
36724	1228	PARK AVENUE	2016 REGISTRATION	2016	25.00	8/ 5/2016	1327
36725	526	BLOOMFIELD STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	749
36726	131	MADISON STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	695
36727	132	MONROE STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	582
36728	120	WILLOW AVENUE	2016 REGISTRATION	2016	25.00	8/ 5/2016	695
36729	501-515	ADAMS STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	123
36730	510	MONROE ST	2016 REGISTRATION	2016	25.00	8/ 5/2016	171
36731	722	ADAMS STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	252
36732	109	JACKSON STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	360
36733	501	NINTH STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	2027
36734	206	THIRTEENTH STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	1332
36735	921	HUDSON STREET	UPDATE	0	10.00	8/ 5/2016	18420
36736	1116	BLOOMFIELD STREET	2016 REGISTRATION	2016	25.00	8/ 5/2016	4453
Grand Total	23				560.00		

[Handwritten Signature]
 8/5/2016

**RENT LEVELING and STABILIZATION OFFICE
CITY OF HOBOKEN, NJ 07030**

CITY OF HOBOKEN
MUNICIPAL BUILDING
HOBOKEN NJ



Transaction #: 36715
Registration Year: 2016
Issue Date: 8/5/2016

Block: 161 Lot: 31

Property Detail

Type: 2
PINCUS, DARREN
902 WILLOW AVENUE
HOBOKEN NJ 07030

Fee: 25.00
Paid: 25.00
Total Due: 0.00

Owner Detail

PINCUS, DARREN
114 FOATHILL RD
FLEMINGTON NJ 08822

Issue By: KV
Receipt #: 36715
Check #: 2861

Suzanne Hetman
RENT OFFICER

**RENT LEVELING and STABILIZATION OFFICE
CITY OF HOBOKEN, NJ 07030**

CITY OF HOBOKEN
MUNICIPAL BUILDING
HOBOKEN NJ



Transaction #: 36715
Registration Year: 2016
Issue Date: 8/5/2016

Block: 161 Lot: 31

Property Detail

CONDO
PINCUS, DARREN
902 WILLOW AVENUE
HOBOKEN NJ 07030

#8
Fairbairn

Fee: 25.00
Paid: 25.00
Total Due: 0.00

Registration Type
2016 REGISTRATION

Owner Detail

PINCUS, DARREN
114 FOATHILL RD
FLEMINGTON NJ 08822

Issue By: KV
Receipt #: 36715
Check #: 2861

Suzanne Hetman
RENT OFFICER

INTRODUCED BY: _____
SECONDED BY: _____

**CITY OF HOBOKEN
RESOLUTION NO. _____**

**RESOLUTION AUTHORIZING THE EXECUTION OF THE ATTACHED
MEMORANDUM OF AGREEMENT BETWEEN THE NEW JERSEY
OFFICE OF EMERGENCY MANAGEMENT AND THE CITY OF
HOBOKEN FIRE DEPARTMENT**

WHEREAS, the New Jersey Office of Emergency Management (NJOEM) is the lead agency in New Jersey responsible for coordinating the State’s preparedness, response, and recovery operations for all hazards impacting the State; and,

WHEREAS, the New Jersey Task Force One is a multi-disciplined Urban Search and Rescue Task Force authorized and sponsored by the NJOEM, responsible for search, rescue, and recovery operations; and,

WHEREAS, certain members of the Hoboken Fire Department wish to participate in the New Jersey Task Force One - Urban Search and Rescue; and,

WHEREAS, a Memorandum of Agreement between the New Jersey Office of Emergency Management as the Sponsoring Agency of New Jersey Task Force One and the Hoboken Fire Department as a Participating Agency of the Task Force has been prepared; and,

WHEREAS, the City recommends execution of the attached Memorandum of Agreement, as it will allow members of the Hoboken Fire Department to assist the State in times of major disaster or emergency.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hoboken that the City of Hoboken may enter into the attached Memorandum of Agreement with the New Jersey Office of Emergency Management.

BE IT FURTHER RESOLVED that the Mayor or her designee may execute any and all documents and take any and all actions necessary to complete and realize the intent and purpose of this resolution.

BE IT FURTHER RESOLVED that this resolution shall be effective immediately.

Meeting date: September 7, 2016

Councilperson	Yea	Nay	Abstain/Present	Absent
Ravi Bhalla	/			
Peter Cunningham	/			
Michael DeFusco	/			

James Doyle	/			
Tiffany Fisher	/			
David Mello	/			
Ruben Ramos, Jr.	/			
Michael Russo	/			
Jen Giattino, Council President	/			

APPROVED:

Quentin Wiest

 QUENTIN WIEST
 BUSINESS ADMINISTRATOR

APPROVED AS TO FORM:

Brian Aloia

 BRIAN ALOIA, ESQ.
 CORPORATION COUNSEL

A TRUE COPY OF A RESOLUTION ADOPTED BY
 THE COUNCIL OF THE CITY OF HOBOKEN, N.J.
 AT A MEETING HELD ON:

SEP 07 2016

James J. Sarena

 CITY CLERK



STATE OF NEW JERSEY
OFFICE OF EMERGENCY MANAGEMENT
NEW JERSEY TASK FORCE ONE
URBAN SEARCH AND RESCUE

Joint Base McGuire-Dix-Lakehurst
CR 547, Lansdowne Road, Hangar #4, Building #118
Lakehurst, New Jersey 08733
Office (732) 657-7001 Fax (732) 657-7015

Appendices Outline for Participating Agency

- Appendix "A" Agreement between FEMA and NJOEM/NJ-TF1. (Attached).
- Appendix "B" The federal regulations published on February 24, 2005 in the Federal Register as the Interim Final Rule at Vol. 70, No. 36, pages 9182-9203. (Attached)
- Appendix "C" **Point of Contact:** For the purposes of notification. Please provide and mark as appendix "C", a 24-hour telephonic and electronic mail, point of contact for your agency. You may provide more than one contact person.
- Appendix "D" **Participants:** Please provide a list of employees referred to as "participants", and mark as appendix "D". This list may be amended as participants join or exit as members of NJ-TF1.
- Appendix "E" **Compensation:** Please provide and mark as appendix "E", participating employees' compensation information (pay rate). This information is being provided for the purposes of participating agency reimbursement.

**MEMORANDUM OF AGREEMENT
FOR PARTICIPATION IN
THE NATIONAL URBAN SEARCH & RESCUE RESPONSE SYSTEM**

Memorandum of Agreement between the U.S. Department of Homeland Security, acting through the Federal Emergency Management Agency, the New Jersey Department of Law and Public Safety, Office of the Attorney General, and the Sponsoring Agency, New Jersey Office of Emergency Management (NJOEM), New Jersey Task Force One (NJ-TF1), regarding participation in the National Urban Search & Rescue Response System.

I. AUTHORITY

This Agreement is authorized under the Homeland Security Act as amended (6 U.S.C. §§ 101 *et seq.*); the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §§ 5121-5206); and the National Urban Search & Rescue Response System Interim Final Rule, 70 Fed. Reg. 9182 (Feb. 24, 2005), codified at 44 CFR Part 208. (Upon the effective date of a Final Rule, the Final Rule will supersede the cited Interim Final Rule and its provisions shall prevail over any contrary provisions of the Interim Final Rule.)

II. PURPOSE

This Agreement sets forth responsibilities with respect to participation in the National Urban Search & Rescue Response System.

III. DEFINITIONS

A. DHS means the Department of Homeland Security.

FEMA means the Federal Emergency Management Agency, an operational component of DHS.

FEMA-Sanctioned Training or Exercise means a training session or exercise sponsored by an organization other than FEMA, which has received FEMA approval.

NJ-TF1 means New Jersey Task Force 1.

NJOEM means the New Jersey Office of Emergency Management.

Regulations means the National Urban Search & Rescue Response System regulations published at 44 CFR Part 208 and the Uniform Administrative Requirements, Cost Principles and Audit Requirements published at 2 CFR Part 200.

Preparedness (Readiness) Cooperative Agreement means a Preparedness (Readiness) Cooperative Agreement as defined in Section 208.2 of the

Regulations.

Stafford Act means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §§ 5121-5206).

State means the New Jersey Department of Law and Public Safety, Office of the Attorney General, NJOEM, and NJ-TF1, collectively or individually.

System Resources means System Members, canines, tools and equipment maintained by a Sponsoring Agency, Participating Agency, or Affiliated Personnel for use as part of the System.

Task Force Program Manager means the person designated by the Sponsoring Agency to be responsible for the day-to-day administration and management of the Task Force.

- B. The following terms, as used in this Memorandum of Agreement, have the meaning set forth in the Stafford Act at 42 U.S.C. § 5122:

Major Disaster

Emergency

- C. The following terms, as used in this Agreement, have the meaning set forth in Section 208.2 or 208.32 of the Regulations:

Activated or Activation

Advising or Advisory

Affiliated Personnel

Alert

Demobilization Order

Participating Agency

Preparedness (Readiness) Cooperative Agreement

Sponsoring Agency

System or National Urban Search & Rescue Response System

System Member

Task Force

US&R or Urban Search and Rescue

IV. RESPONSIBILITIES

- A. DHS, through FEMA, is responsible for developing and administering the System, and its responsibilities include:
1. Promulgating the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
 2. Maintaining overall direction and control of System Resources engaged in System activities, as contemplated in the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
 3. Maintaining an advisory and consultative structure for communicating and consulting with System participants with respect to the responsibilities set forth in this section, as appropriate;
 4. Preparing, providing, and maintaining a Preparedness (Readiness) Cooperative Agreement and a Response Cooperative Agreement with the Sponsoring Agency, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
 5. Providing readiness funding to the Sponsoring Agency, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
 6. Developing, scheduling, and delivering FEMA-Sponsored Training and Exercises;
 7. Granting FEMA sanction to training and exercises in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
 8. Maintaining overall direction and control of System Resources engaged in FEMA-Sanctioned Training and Exercises and FEMA-Sponsored Training and Exercises;
 9. Evaluating System and performance in accordance with the Regulations, standards, policies and procedures and directives of the System;
 10. Advising, Alerting, Activating and Demobilizing System Resources;
 11. Obtaining the consent of the State, if applicable, and the Sponsoring Agency to Alert or Activate System Resources, in accordance with the Regulations, standards, policies and procedures of the System;

12. Appointing System Members into Federal service at appropriate times;
 13. Processing claims for Federal employee benefits, as set forth in the Regulations and this Agreement;
 14. Maintaining overall direction and control of System Resources engaged in System activities during Alert or Activation;
 15. Providing ground, air, rail, or marine transportation for System Resources during Alert or Activation, as required;
 16. Providing re-supply and logistical support for System Resources during Activation;
 17. Establishing, developing, administering, Advising, Alerting, Activating, Demobilizing, and maintaining overall direction and control of System management teams, as appropriate;
 18. Notifying the Sponsoring Agency when FEMA has Alerted, Activated, or Deactivated a Task Force member for participation on a System management team or in a technical function;
 19. Scheduling and conducting periodic meetings of System advisory committees and other consultative bodies;
 20. Processing claims for reimbursement in accordance with the Regulations; and
 21. Ensuring proper coordination and cooperation within FEMA, between FEMA and other DHS components and entities, and between FEMA and other Federal, state, local, and private-sector entities for the purpose of System activities.
- B. The State is responsible for:
1. Maintaining 24-hour per day capability to receive a request for Alert or Activation of System Resources and to accept or decline the request within one hour; and
 2. Using Task Forces resident within the State as State assets before requesting additional Task Forces from FEMA in anticipation of, or in response to, a disaster or emergency within the State for which the State or its local governments have primary responsibility, unless the resources have been otherwise committed.
- C. The Sponsoring Agency, NJOEM/NJ-TF1, is responsible for organizing and administering the Task Force, and this responsibility includes the following:

1. Recruiting and training the Task Force, according to the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System promulgated by FEMA;
2. Designating a Task Force Program Manager, as well as other such persons as required by the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
3. Executing a Preparedness (Readiness) Cooperative Agreement and a Response Cooperative Agreement with FEMA, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
4. Providing administrative, financial, and personnel management for the Task Force, to include providing FEMA with all documentation required to appoint System Members into Federal service;
5. Maintaining such agreements with Participating Agencies and Affiliated Personnel as are required under the Regulations, standards, policies, directives, procedures, and overall concept of operations for the System. Agreements with Participating Agencies and Affiliated Personnel for System activities must be consistent with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System, and this Memorandum of Agreement. All agreements with Participating Agencies must include an express authorization for the Sponsoring Agency to commit an employee of the Participating Agency to Federal service. All agreements with Affiliated Personnel must include an express authorization for the Sponsoring Agency to commit the individual to Federal service;
6. Registering and qualifying all Task Force medical personnel, as required under the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
7. Requesting FEMA sanction for training and exercises, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
8. Notifying FEMA when there is a change in the operational status of the Task Force;
9. Maintaining 24-hour per day capability to receive a request for Alert or Activation of System Resources and to accept or decline the request within one hour;
10. Acquiring, maintaining, and accounting for equipment, in accordance with the Regulations, standards, policies, procedures, directives, and overall

concept of operations for the System;

11. Complying with financial, administrative, acquisition, reimbursement, and reporting requirements set forth in the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
12. To the extent that the Sponsoring Agency chooses to provide System Members for System management teams and technical functions, or for any FEMA advisory and consultative entities, complying with financial, administrative, acquisition, reimbursement, and reporting requirements set forth in the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System with respect to these System Members;
13. Keeping all records relating to the Task Force, in accordance with the Regulations, standards, policies, procedures, directives, and overall concept of operations for the System;
14. Submitting to FEMA a copy of any agreements it maintains with any Participating Agency and Affiliated Personnel; and
15. Processing state and local employee benefit claims for which a System Member may be eligible.

V. POINTS OF CONTACT

A. DHS/FEMA:

Chief, Urban Search & Rescue Branch
Federal Emergency Management Agency
U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472
(202) 212-2279

B. Sponsoring Agency:

Bureau Chief, NJOEM, Emergency Response Bureau,
P.O. Box 7068
West Trenton, NJ 08628
(609) 963-6980

VI. OTHER PROVISIONS

A. Financial Arrangements

1. FEMA shall provide the Sponsoring Agency with funding for readiness

activities pursuant to a Preparedness (Readiness) Cooperative Agreement, in accordance with the Regulations.

2. FEMA shall reimburse the Sponsoring Agency for costs incurred in System response activities pursuant to a Response Cooperative Agreement, in accordance with the Regulations.
3. All financial commitments are subject to the availability of funds. Nothing in this Agreement obligates funds of the respective parties.

B. Title to Equipment

1. Title to equipment purchased and maintained by the Sponsoring Agency with funds provided under a Preparedness (Readiness) Cooperative Agreement vests in the Sponsoring Agency in accordance with 2 CFR 200.313(a).
2. Title to equipment purchased by DHS, and distributed to and maintained by the Sponsoring Agency, remains vested in DHS in accordance with 2 CFR 200.312, unless transferred to the Sponsoring Agency under applicable Federal regulations.

C. Use of Sponsoring Agency Resources

1. Offer, consent and acceptance of services, facilities and employees

The Sponsoring Agency and the State offer and consent to FEMA's use of their services, facilities, and employees as specifically described in this Memorandum of Agreement with respect to the System, and FEMA accepts the offer of such services, facilities, and employees in carrying out the purposes of the Sections 306(a) and 621(c)(1) of the Stafford Act, 42 U.S.C. §§ 5149(a) and 5197(c)(1).

2. Appointment into Federal Service

a. FEMA will appoint System Members into Federal service pursuant to section 208.11 of the Regulations, as follows:

- (1) When instructing or participating in FEMA-Sanctioned Training and Exercises;
- (2) When instructing or participating in FEMA-Sponsored Training and Exercises;
- (3) When undertaking specific duties required by FEMA during an Alert to prepare for Activation; and

(4) When Activated.

- b. At all such times when System Members are appointed into Federal service, those System Members will be under FEMA's overall direction and control in accordance with the National US&R Response System Operations Manual. .
- c. A System Member's appointment into Federal service is concurrent with a System Member's employment with the Sponsoring Agency or other entity.
- d. The State may recommend to the Sponsoring Agency the removal of an individual from the Task Force with cause.

3. Activation into State Service

- a. The State reserves the right to name individual Task Force Members, and determine the composition of the activated Task Force, when utilizing the Task Force as a State asset.
- b. An individual's status as a System Member does not require the State to activate that member in response to a Task Force activation as a State asset.

D. Coverage under Federal Employees Compensation Act (FECA) and Federal Tort Claims Act (FTCA);

- 1. Pursuant to section 208.11 of the Regulations it is FEMA's intent that System Members appointed into Federal service are Federal employees during the activities described in subsection C.2.a., above, for the purposes of the following Federal Statutes:
 - a. The Federal Employees Compensation Act.
 - b. The Federal Tort Claims Act.
- 2. It is FEMA's intent that System Members appointed into Federal service are Public Safety Officers during the activities described in subsection C.2.a., above, as defined in the Public Safety Officers Benefit Act, 42 U.S.C. § 3796b.
- 3. No individual may participate in the Task Force who is not an employee of the Sponsoring Agency, an employee of a Participating Agency, or an Affiliated Personnel.
- 4. Nothing contained within this Agreement is intended to diminish a System Member's non-Federal employment rights, relationships, or entitlements

to non-Federal pension or welfare benefits.

- E. FEMA, the State, and the Sponsoring Agency will not discriminate against any System Member or applicant for a position as a System Member on the grounds of race, color, religion, sex, age, national origin, or economic status in fulfilling any and all obligations under this Memorandum of Agreement.
- F. Use of Federal facilities, supplies and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination. Distribution of supplies, processing of applications, provision of technical assistance and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, sex, age, national origin, or economic status.
- G. The State may inspect and audit the facilities, records and equipment of the Sponsoring Agency to ensure the Sponsoring Agency is complying with all relevant State and Federal statutes and regulations, and FEMA and Urban Search & Rescue System policies and procedures. The State shall inform FEMA prior to any such inspection or audit and shall report their findings to FEMA.
- H. The State may participate as an ex-officio member of any State task force advisory board.

VII. EFFECTIVE DATE

The terms of this Agreement will become effective on the date that the last party signs this Agreement.

VIII. MODIFICATION, AMENDMENT, AND TERMINATION

- A. Any provision of this Agreement later found to be in conflict with Federal law or regulation, or invalidated by a court of competent jurisdiction, shall be considered inoperable and/or superseded by that law or regulation. Any provision found inoperable is severable from this Agreement, and the remainder of the Agreement shall remain in full force.
- B. This Agreement may be modified or amended only with the written agreement of all of the parties.
- C. This Agreement remains in effect unless terminated. This Agreement may be terminated by any party upon 30 days written notice.
- D. This Agreement is the full and complete agreement between the undersigned parties, and supersedes any prior agreement between the parties, written or oral, with the exception of an existing Preparedness (Readiness) Cooperative Agreement or Response Cooperative Agreement.

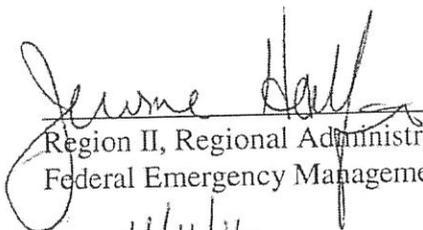
- E. This may be executed in several counterparts, each of which is a valid agreement, provided that all parties to the Memorandum of Agreement have executed at least one original copy of the Memorandum of Agreement.

IX. EXECUTION



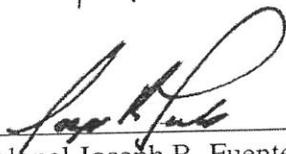
Damon Penn
Assistant Administrator for Response
Federal Emergency Management Agency

Date: 6/1/2016



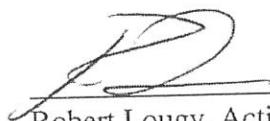
Jerome Hall
Region II, Regional Administrator
Federal Emergency Management Agency

Date: 4/11/16



Colonel Joseph R. Fuentes, State Director
New Jersey Office of Emergency
Management
Sponsoring Agency

Date: 4/4/16



Robert Lougy, Acting Attorney General
Department of Law and Public Safety
Office of the Attorney General

Date: 4/5/16

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 208

RIN 1660-AA07 (formerly RIN 3067-AC93)

National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate (EP&R), Department of Homeland Security (DHS).

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule standardizes the financing, administration and operation of the National Urban Search and Rescue Response System, a cooperative effort of the Department of Homeland Security, participating State emergency management agencies and local public safety agencies across the country. This rule addresses the relationship between Sponsoring Agencies¹ of Urban Search & Rescue (US&R) Task Forces and DHS and also funding for preparedness and response activities, including the acquisition of equipment and supplies and training.

Concurrently we² are publishing as a Notice in this issue of the **Federal Register** a Maximum Pay Rate Table on which we also request comments.

DATES: This interim rule is effective February 24, 2005. We invite comments on this interim rule and the Maximum Pay Rate Table published separately today as a Notice in this issue of the **Federal Register**. We will accept comments on both until April 11, 2005.

ADDRESSES: *Mail:* When submitting comments by mail, please send the comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472. To ensure proper handling, please reference RIN 1660-AA07 and Docket No. DHS-2004-0010 on your correspondence. This mailing address may also be used for submitting comments on paper, disk, or CD-ROM.

Hand Delivery/Courier: The address for submitting comments by hand delivery or courier is the same as that for submitting comments by mail.

¹ Sponsoring Agencies are State or local government agencies that have signed Memoranda of Agreement with DHS to organize and manage US&R Task Forces.

² Throughout the preamble to this rule the terms "we" and "our" refer to and mean the Department of Homeland Security. "You" refers to the reader.

Viewing Comments: You may view comments and background material at: <http://www.epa.gov/feddoCKET> or <http://www.regulations.gov>. You may also inspect comments in person at the Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Michael Tamillow, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., room 326, Washington, DC 20472, (202) 646-2549, or (e-mail) mike.tamilow@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Federal Emergency Management Agency (FEMA) published a proposed rule, National Urban Search and Rescue Response System, on December 18, 2002, 67 FR 77627-77640 (Proposed Rule). On March 1, 2003, FEMA became a part of the Emergency Preparedness and Response Directorate (EP&R), Department of Homeland Security (DHS). The National Urban Search and Rescue Response System is now a program in FEMA under the EP&R Directorate.

This preamble and Interim Rule reflect certain decisions made regarding comments that FEMA received on the Proposed Rule, and changes resulting from FEMA's integration into the Department of Homeland Security. The process for creating and updating the Maximum Pay Rate Table (Table), which establishes the maximum rates that DHS will pay for certain medical, engineering, canine handling and backfill services, is described in § 208.12. The Maximum Pay Rate Table, which was mentioned but not published in the Proposed Rule, is incorporated in the Interim Rule, and published concurrently with this Interim Rule as a Notice. Because the Maximum Pay Rate Table was not published previously and will become a part of the National Urban Search and Rescue Response System final rule, we are asking for public comment both on the Table and the Interim Rule.

Section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5144, authorizes the President of the United States to form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. The President delegated this function to the Director of the FEMA under Executive Order (E.O.) 12148. Under E.O. 13286 of

February 28, 2003, the President amended E.O. 12148 to transfer the FEMA Director's delegated authority to the Secretary of Homeland Security, and under Homeland Security Delegation No. 9100, delegated the Secretary's authority under Title V of the Homeland Security Act of 2002, which includes the Stafford Act, to the Under Secretary for Emergency Preparedness and Response (EP&R).

Section 306(a) of the Stafford Act authorizes the President (as delegated to the Under Secretary for EP&R) to accept and use the services or facilities of any State or local government, or of any agency, officer or employee thereof, with the consent of such government, in the performance of his responsibilities under the Stafford Act. Section 306(b) of the Stafford Act authorizes the President to appoint and fix the compensation of temporary personnel without regard to U.S. Code provisions governing appointments in the competitive service. Section 403(a)(3)(B) of the Stafford Act provides further that the President may authorize Federal agencies to perform work on public or private lands essential to save lives and protect property, including search and rescue and emergency medical care, and other essential needs. Under section 621(c) of the Stafford Act, the Secretary may accept and use the services of State or local governments, and use voluntary services by individuals or organizations as needed.

FEMA established the National Urban Search & Rescue Response System (System or US&R) under the authorities cited. The System provides specialized lifesaving assistance during major disasters or emergencies that the President declares under the Stafford Act. US&R operational activities include locating, extricating and providing on-site medical treatment to victims trapped in collapsed structures, victims of weapons of mass destruction events, and when assigned, performing incident command or other operational activities.

Created in consultation with State emergency management agencies and local public safety agencies, the System is built around a core of Sponsoring Agencies prepared to deploy US&R Task Forces³ immediately and initiate US&R operations at DHS's direction. Members of the Task Forces, also referred to as "System Members," may respond as

³ The US&R System comprises 28 Task Forces in 19 States. A full Task Force consists of 70 System Members, three deep (designed for 210 members) specially trained and equipped to find, extricate, and provide initial medical care to victims of collapsed buildings, weapons of mass destruction, as well as to perform other assigned duties.

part of Joint Management Teams (JMT)⁴ or other overhead or technical teams, or as individual resources.

The Task Forces are staffed primarily by local fire department and emergency services personnel specially trained and experienced in collapsed structure search and rescue operations, incident management, and other emergency operational activities. On activation by DHS, members of the US&R Task Forces, US&R System Members of Joint Management Teams, and other overhead or technical teams, operate as Temporary Excepted Federal Volunteers.⁵

The National Urban Search and Rescue Response System presently comprises 28 US&R Task Forces in 19 States. Typically, a State agency or local public safety agency (Sponsoring Agency) sponsors each of the Task Forces. While the Sponsoring Agencies are solely responsible for the administrative management of their respective Task Forces, many Sponsoring Agencies invite other public safety agencies and other entities in their vicinity to contribute personnel and other resources to the Task Force. These public safety agencies and other entities that enter into agreements with the Sponsoring Agency to contribute personnel and other resources are Participating Agencies. In certain cases, individuals who are not employed by a Sponsoring Agency or Participating Agency⁶ become members of a Task Force as Affiliated Personnel.⁷

DHS provides financial support in the form of grants or Cooperative Agreements⁸ (Grants) to each of the

Sponsoring Agencies under the disaster preparedness and training authorities of the Stafford Act. The Sponsoring Agencies use these Grants to train Task Force personnel, maintain a state of readiness and to acquire necessary equipment and supplies. DHS awards and administers Grants under 44 CFR 13. In return for this financial support, each Task Force must be available for deployment as a Federal resource when DHS activates it.⁹ Task Forces also must maintain minimum training requirements that DHS prescribes.¹⁰

Separate non-standardized memoranda of agreement (MOA), which were individually negotiated at different stages in the System's development, currently govern the relationship between DHS and each of the Sponsoring Agencies. In addition, we require the Sponsoring Agencies to enter into separate Cooperative Agreements on forms that our Office of Financial Management prescribes. As the System has matured, the participants have concluded that it is desirable to standardize these relationships through a set of comprehensive regulations. We developed the Interim Rule with the assistance of the National Urban Search and Rescue Advisory Committee and its Legal Issues Working Group.

Adoption of the Interim Rule enables DHS to standardize our agreements with the Sponsoring Agencies. Following adoption of the final rule, we will ask each of the Sponsoring Agencies to enter into a new, streamlined MOA as well as a Preparedness Cooperative Agreement,¹¹ as described in subpart B

of the rule, and a Response Cooperative Agreement,¹² as described in subpart C of this rule. These new, standardized agreements will document our relationship with the Sponsoring Agencies.¹³ Upon the effective date of the Interim Rule, if a conflict exists between a provision of the rule and an existing MOA, the provision of the rule will control.

References in the Preamble to Parts, Subparts or Sections

Throughout the preamble and rule, references to part, subpart, or sections (as "section" or "\$") are to parts, subparts or sections of this rule unless specifically cited as a section of an Act, e.g., section 306 of the Stafford Act, or document other than this rule.

Organization of the Interim Rule

The Interim Rule is divided into four subparts. Subpart A addresses the organization of the National US&R Response System, explains the relationship among the various components of the system, incorporates certain provisions of other regulations and provides for sanctions if US&R regulations and directives are violated.

Subpart B describes the process through which we provide grant funds to the Sponsoring Agencies to maintain Task Force readiness. Sponsoring Agencies use these grant funds to administer the Task Forces, provide initial and recurrent training,¹⁴ and acquire and maintain a uniform cache of equipment and supplies.

Following adoption of the final rule, we will ask each Sponsoring Agency to enter into a Preparedness Cooperative Agreement with us. In addition, from time to time, DHS will purchase and distribute equipment and supplies directly to each Task Force.

capabilities and readiness for operations, including training.

¹² When DHS activates a Task Force it provides Federal funding for the Task Force's response under the terms of the Response Cooperative Agreement.

¹³ Following adoption of the final rule, DHS expects to develop a National US&R Response System Directive Manual, which will contain system policies and explain other Federal regulations, and will govern the operation of the National US&R Response System. The Directive Manual will be updated periodically as needed.

¹⁴ Sections 306(a) and 621(c) of the Stafford Act, 42 U.S.C. 5149(a), 5197(c), authorize DHS to federalize members of US&R Task Forces to participate in preparedness activities. We periodically federalize US&R teams to participate in DHS-sanctioned training exercises, also known as mobilization exercises. During these periods, they are not "Activated" within the meaning of § 208.2 of the rule and, therefore, the provisions of subpart C do not apply to DHS-sanctioned training exercises. Funding for participation in DHS-sanctioned training exercises may be available under § 208.24(b) of the rule.

⁴ A Joint Management Team is a multi-disciplinary group of National Disaster Medical System (NDMS), Urban Search and Rescue (US&R) and other specialists combined to provide operational, planning, logistics, finance and administrative support for US&R and NDMS resources, and to provide technical advice and assistance to State and local governments.

⁵ The term "Temporary Excepted Federal Volunteer" means that a System member's status is temporary for the period of Federal activation, excepted from Civil Service rules regarding Federal employment, Federal for purposes of tort claim protection and Federal "workers' compensation", and a volunteer in that DHS does not pay the individual directly, but reimburses the Sponsoring Agency for the System Member's services.

⁶ A Participating Agency is a State or Local Government, non-profit organization, or private organization that has executed an agreement with a Sponsoring Agency to participate in the National US&R Response System.

⁷ Affiliated Personnel are individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.

⁸ Cooperative Agreements are similar to grants, but differ from grants in the amount of government cooperation and involvement in the implementation of the agreement.

⁹ The Task Forces also respond to disasters and emergencies in their home states as State resources. DHS does not normally and directly reimburse Sponsoring Agencies of the Task Forces for the costs that Task Forces incur when deploying in their home states, although in a State deployment, Task Forces may use equipment that they have purchased with DHS grant funds and Federal property that is in their custody. Subpart C of this rule does not cover in-state deployment of US&R resources. However, Federal reimbursement for the cost of an in-state deployment may be available through DHS's Public Assistance Program under regulations published at 44 CFR part 206. In addition, the Office of Foreign Disaster Assistance of the U.S. Agency for International Development (USAID) often uses the services of certain Task Forces to deliver humanitarian assistance abroad under agreements to which DHS is not a party. The rule does not affect the relationships between USAID and the Sponsoring Agencies of the Task Forces.

¹⁰ In addition to participation on Task Forces, participants in the System (referred to as System Members) may also be called upon to serve as members of Joint Management Teams or other overhead or technical teams.

¹¹ DHS enters into a Preparedness Cooperative Agreement with each Sponsoring Agency to provide Federal funding to develop and maintain System resource (personnel, equipment and supplies)

Subpart C addresses the deployment of System Members, either as part of a Task Force, a Joint Management Team, or another overhead or technical team, as a Federal resource, and the reimbursement of the Sponsoring Agencies for the costs that they incur as a result of these deployments. This subpart also explains the Response Cooperative Agreement that we will ask each Sponsoring Agency to sign following adoption of the final rule.

Subpart D establishes the procedures by which Sponsoring Agencies may present claims to DHS for reimbursement of costs incurred when we use System Members as Federal resources, including the timeframes in which the Sponsoring Agencies must present such claims, and procedures for appeals, in writing and submitted within 60 days after receipt of written notice of DHS's determination of the initial appeal. The timeframes and procedures for appeals are set out in § 208.62, Appeals.

A glossary of defined terms that we use throughout the Interim Rule and in subpart A appears in § 208.2. A sub-glossary of defined terms used 208.32 (subpart C) appears in that subpart.

Sectional Analysis

Section 208.33 sets forth the principles under which we will reimburse Sponsoring Agencies for participating in Alerts¹⁵ and Activations.¹⁶ Subsection (a) expresses our policy that participation in Alerts and Activations be as cost neutral as possible to Sponsoring Agencies and Participating Agencies. This commitment is critical to avoid putting local fire departments, which are the predominant sponsors of the Task Forces, at risk for the cost of providing emergency services outside of their respective jurisdictions. Payments are subject to 44 CFR part 13, particularly §§ 13.21 (payment) and 13.22 (allowable cost). 44 CFR 13.22 incorporates various Office of Management and Budget (OMB) circulars that address allowable cost. However, if there is a conflict between this rule and 44 CFR part 13 or the OMB Circulars, this rule controls.

Section 208.39 explains how we will compensate Sponsoring Agencies for personnel costs during Activations. When we deploy System Members,

either as part of a Task Force, or as part of a Joint Management Team or other overhead or technical team, we appoint them into Federal service as Excepted Temporary Federal Volunteers and they work under our direction and control for the duration of the deployment. However, System Members who are regularly employed by a Sponsoring Agency or Participating Agency retain their concurrent employment relationship with their usual employers.¹⁷ The maintenance of this concurrent employment relationship is a fundamental principle of the National US&R Response System, and dates from the inception of the System. We adopted the principle after consultations with the States, local governments and public safety employee organizations and we intend it to prevent System Members from suffering a break in their service to the usual employer while away on the Federal deployment. While on a Federal deployment, these System Members receive pay and benefits from their usual employers during the Federal deployment just as they would if they were not Activated.

Section 208.39(a) of this part provides that we will reimburse the Sponsoring Agency for personnel costs that result from the Activation and are consistent with this rule. The Sponsoring Agency is responsible for reimbursing the personnel costs of its Participating Agencies under the provisions of § 208.39.

Section 208.39(b) of this part speaks to how we compensate Sponsoring Agencies for overtime costs that might not have been incurred but for the Federal deployment. Section 7(k) of the Fair Labor Standards Act (section 7(k)) exempts public safety organizations from paying their employees overtime under certain circumstances. As interpreted by Department of Labor regulations and court decisions, the section 7(k) exemption does not apply unless the employee in question is trained in fire protection, has the legal authority and responsibility to engage in fire suppression, is employed by a public safety agency engaged in fire suppression and actually engages in fire suppression at least 80 percent of the time.

After reviewing Department of Labor regulations relating to section 7(k) and relevant court decisions, we are uncertain whether the rescue activities

undertaken by Sponsoring Agencies of the US&R Task Forces are analogous to fire suppression. We also note that some System Members will not fall within the section 7(k) exemption because they are not regularly employed in fire suppression. It would be unfair to compensate these individuals at one overtime rate, when fellow System Members, who may be volunteers or part-time fire service employees, are compensated at another overtime rate. For these reasons, DHS instructs the Sponsoring Agencies to disregard the section 7(k) exemption when calculating its reimbursement for personnel costs, and reimburses Sponsoring Agencies for regular wages and overtime wages as described in § 208.39(d), (e) and (f).¹⁸ This instruction will not create a windfall for Sponsoring Agencies and Participating Agencies because they cannot charge DHS for personnel costs in excess of those that they actually and normally incur.

Section 208.39(c) of this part establishes a uniform 24-hour tour of duty during the Federal deployment. DHS will reimburse the Sponsoring Agencies for 24 hours of pay for each day that a System Member is deployed, from his or her arrival at the Point of Assembly¹⁹ until his or her release from duty, which may be the airport or Air Force Base to which the Task Force returns, or at the Task Force's original Point of Assembly,²⁰ or some other point. This reimbursement procedure is known as "portal to portal" pay.

We are not establishing a different rate of reimbursement for meal periods or scheduled sleep periods. Once deployed, all System Members must be available for immediate response twenty-four hours a day during the entire deployment period. Meal periods and sleep periods will be interrupted if System Members are needed to engage in vital lifesaving activities, just as they are in the firehouse.

Search and rescue professionals whom we expect to respond on a moment's notice at any time during a 24-hour period should be compensated for 24 hours of work. Activated System Members often work the first 24 to 48 hours of the Activation continuously, as

¹⁵ Alert means the status of a System resource's readiness when triggered by an Alert Order indicating that DHS may Activate the System resource.

¹⁶ Activation means the status of a System resource placed at the direction, control and funding of DHS in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

¹⁷ In some cases, the relationship between the individual and the Sponsoring Agency or Participating Agency is a contractual relationship or a volunteer relationship. These regulations do not create a common law employment relationship between an individual and a Sponsoring Agency or Participating Agency where none otherwise exists.

¹⁸ Section 208.40(b) addresses reimbursement for various differentials paid by Sponsoring Agencies.

¹⁹ Certain activated System Members will not report to a Point of Assembly, but rather will be instructed to travel to the incident location directly from their home or regular place of work. These individuals are Activated when they leave their home or regular place of business and we will adjust the "portal to portal" pay of these individuals accordingly.

²⁰ The Point of Assembly is the location where a Task Force assembles before departure in response to an activation order.

this initial period involves packaging the Task Force for transport, loading and unloading equipment, attending briefings, receiving and adjusting to changes in operational objectives, establishing the base of operations and initiating the search for live victims. Once the search begins, we control Task Force activities during the entire 24-hour period and Task Forces must be available for immediate response at any time.

Section 208.39(g) provides for the reimbursement of Backfill²¹ expenses. The National US&R Response System depends upon the voluntary participation of public safety agencies. We recognize that these public safety agencies may be short-handed when some of their personnel are away on a Federal deployment. If a public safety agency ordinarily Backfills a position in situations where a regular employee is unavailable for a period of time similar to that spent on a US&R deployment (e.g., Family and Medical Leave, participation in an extended mutual aid assignment, injury or disability), then the public safety agency may bill DHS for the cost of Backfilling the position for the period that the regular employee is away on a Federal deployment. However, we will only reimburse for the incremental overtime salary and benefit expenses associated with the replacement employee. We will not reimburse the Backfilling agency for the regular salary and overtime cost of the replacement employee because the public safety agency would have to pay this cost if the Federal deployment had not occurred.

Public Comments on the Proposed Rule

During the comment period on the Proposed Rule, which closed on February 3, 2003, we received a number of comments. We summarize the comments and our response to them in the materials that follow.

Usage of Terms in the SUPPLEMENTARY INFORMATION. We received comments concerning the use of the terms "Task Force Member" and "System Member" in the SUPPLEMENTARY INFORMATION to the Proposed Rule. In the SUPPLEMENTARY INFORMATION to the Proposed Rule, we used the term "Task Force Member" to denote individuals who respond as part of the National US&R Response System. However, while most participants in the System respond as part of a US&R Task Force, participants in the System may also be called upon to serve on Joint

Management Teams and other overhead or technical teams. As a result, the term "System Member" is a more accurate and comprehensive term to describe individuals who participate in System activities, and the term "Task Force Member" is best used to describe a System Member who is Activated as part of a Task Force. We have corrected the usage of these terms in the SUPPLEMENTARY INFORMATION to the Interim Rule.

In certain parts of the SUPPLEMENTARY INFORMATION to the Proposed Rule, we also used the term "US&R Task Force," rather than "Sponsoring Agency," to denote the agency or entity with which DHS has entered into legal and financial agreements with respect to the US&R Task Forces. We have corrected the usage of these terms in the SUPPLEMENTARY INFORMATION to the Interim Rule.

Finally, in the SUPPLEMENTARY INFORMATION to the Proposed Rule, we described the reimbursable period during an Activation as ending when a System Member returns to the pre-deployment staging area. This description conflicts both with standard terminology and the reality of System deployments. A more accurate description of the duration of the reimbursable period during an Activation is set forth in the Interim Rule.

Eligibility for Reimbursement and Coverage Under Federal Statutes While Traveling to and from the Point of Assembly. One Task Force commented on the time period that we propose to pay System Members, namely from arrival at the Point of Assembly until his or her release from duty, which may be the airport or Air Force Base to which the Task Force returns, or at the Task Force's original Point of Assembly, or some other point. Noting that some of its members live 2 or more hours away from the Point of Assembly, the Sponsoring Agency reimburses members from the time that they are alerted to the time that they return home (including travel mileage).

Response: This question has two aspects: (1) Reimbursement for time spent traveling to and from the Point of Assembly, and reimbursement for travel mileage while traveling to and from the Point of Assembly; and (2) consideration of time spent traveling to and from the Point of Assembly as "in the course of employment" for the purposes of workers' compensation (for injuries sustained) and tort liability (for civil wrongs or harms caused) during that travel.

Reimbursement: This issue is related to the Fair Labor Standards Act (FLSA),

which establishes a minimum hourly wage for employees and requires employers to pay overtime wages for hours worked above the statutory maximum. It is also related to the Portal-to-Portal Act of 1947, which requires that time spent "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform" is not compensable time under the FLSA unless it is compensable by contract, custom, or practice. The general Federal rule regarding travel mileage is: commuting to and from work, that is, between permanent residence and permanent duty station, is a personal expense. The employee is expected to be at work; how the employee chooses to get there is entirely his or her own business. 27 Comp. Gen. 1 (1947).

There are exceptions to the general rule if the travel is not ordinary and is spent outside the workday to and from job assignments. Examples include substantial travel to an emergency job assignment at a location outside the normal workplace, or the employer requires the employee to be "on call" to respond to emergency job assignments. A corollary of the "substantial travel" exception is that the travel is noncompensable if the amount of time spent traveling is minimal.

On reconsideration of our position, we will reimburse certain travel costs and time spent traveling to the Point of Assembly when a System Member responds to an Activation and must travel a considerable distance or time, as determined by DHS on a case by case basis, to reach the Point of Assembly. Otherwise, we will follow the general rule regarding noncompensable travel, including minimal travel. When we activate a Task Force or other System resource, timely assembly of the System Members is critical, and under those circumstances warrants our exception to the general rule. This exception will apply only to Activations, and will not apply, for instance, to Alerts, to travel home after return to the Point of Assembly, or to travel required for training, which we consider to be ordinary noncompensable travel.

In the Course of Employment: Ordinary travel to and from a fixed workplace is generally not within the scope of employment for workers' compensation purposes, under the "going and coming" rule. Under the rule, employees with a fixed workplace are covered by workers' compensation only when they are on their employer's premises, or performing an assignment required by the employer. One of the

²¹ Backfill means the personnel practice of temporarily replacing a person in his or her usual position with another person.

exceptions to the general rule of going and coming is travel to and from job assignments, where the employer compensates the employee for the time or expense of the travel. Consistent with that exception and our intent to reimburse travel costs and time spent traveling to the Point of Assembly in response to an Activation, on a case-by-case basis we will meet our obligations regarding workers' compensation claims that arise out of injuries that System Members incur while traveling to a Point of Assembly in response to an Activation, but for no other purpose.

Definitions. We received several comments on the definitions in § 208.2, and made the following changes:

We changed the term "Memorandum of Understanding" to "Memorandum of Agreement."

The definition for "Equipment Cache List" now reads: "The DHS-issued list that defines:

"(1) The equipment and supplies that US&R will furnish to Sponsoring Agencies; and

"(2) the maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with FEMA funds."

The definition for "Participating Agency" reads: "A State or Local Government, non-profit organization, or private organization that has executed an agreement with the Sponsoring Agency to participate in the National US&R Response System."

One Task Force expressed concern regarding the definitions of "Program Manager," "Program Office," and "Project Manager." We have decided to retain the definitions of "Program Manager" and "Program Office" as they are. Currently, the Program Manager is the Chief of the US&R Section, which is part of the Response Division of FEMA, under the Emergency Preparedness and Response Directorate of DHS, and the Program Office is the US&R Section. However, these entities may change as the organizational structure of DHS evolves. We will notify the Sponsoring Agencies if we designate a different Program Manager or Program Office. We have deleted the definition of "Project Manager" from the definitions set forth in § 208.22, since that term appears nowhere else in the Interim Rule.

We have added the following definition: "*Program Directive* means guidance and direction for action to ensure consistency and standardization across the National US&R Response System." This replaces the term "System Order" in the proposed rule with "Program Directive" in the interim rule.

One commenter recommended that DHS include a definition of "Affiliated Member." The equivalent term is defined at § 208.32 as "Affiliated Personnel."

Section 208.6, System Resource Reports. One commenter noted that Sponsoring Agency, Participating Agencies and System Members are to cooperate fully in audits, investigations, studies and evaluation, and asked, "who pays for salary cost associated with gathering and processing the information?"

DHS provides funding for program management in the Preparedness Cooperative Agreement to support administrative activities, including the salary costs for gathering and processing System resource reports.

Workers' Compensation and Other Benefit Costs. Several Sponsoring Agencies commented that workers' compensation and other benefit costs incurred by Sponsoring Agencies as the result of an injury or death to a System Member are not reimbursable costs. As set forth in § 208.11 and explained in the Supplementary Information, DHS will appoint System Members into Federal service, concurrent with those individuals' local employment, to secure protection for such employees under the Federal Employees' Compensation Act and the Federal Tort Claims Act. If a System Member sustains an injury, that System Member may file a claim for compensation under the Federal Employees' Compensation Act. Because the System Member's Federal appointment is concurrent with his or her local employment, the System Member may also be eligible for compensation under his or her local workers' compensation system. In that case, the System Member may collect either the incremental difference between Federal benefits and local benefits, or may collect local benefits in full, depending on whether the local benefits may be offset by the Federal payment to the System Member.

As explained in § 208.40, DHS will reimburse the Sponsoring Agency for the workers' compensation insurance premium costs associated with the time during Activation. However, any local benefit payment is not a reimbursable expense, because DHS (through the U.S. Department of Labor) provides coverage under the Federal Employees Compensation Act, and because we are prohibited under our current statutory authority from reimbursing Sponsoring Agencies for the costs of benefit payments.

Death or Disability in Line of Duty. One Participating Agency asked whether a System Member killed or

disabled while Activated would be entitled to benefits through the agency's municipal pension program, and whether the death or injury would be considered in the line of duty. We intend that System Members remain fully eligible for local benefits during Federal Activation, and that, as a result, any death or injury during Activation should be considered to have occurred while the System Member was acting in the scope of employment.

Federal Death Benefits. One Sponsoring Agency asked how a "Federal death benefit," if incurred, would be calculated. The "Federal death benefit" for System Members comprises two separate components: (1) A benefit payment under the Federal Employees Compensation Act; and (2) a payment under the Public Safety Officers' Benefit Act. The death and injury benefits available under each of those statutes are determined using formulas set forth in those statutes.

Voluntary Contribution to Municipal Pension Plans. One Sponsoring Agency asked whether contributions to a municipal pension plan made voluntarily by System Members during an Activation, rather than contributions made by the System Member's employer under the terms of a collective bargaining agreement or other arrangement, are reimbursable by DHS. Voluntary employee contributions, as opposed to mandatory employer contributions, are not reimbursable expenses.

Contributions to the Pension Plan Based on Overtime. One Sponsoring Agency commented that under its benefits plan, salary is defined as the total actual fixed cash compensation, including overtime, and contributions to its pension plan are based on this total salary, including overtime. The Sponsoring Agency asked whether contributions to the pension plan based on overtime pay received during Activation reimbursable under this rule. Under § 208.40(a)(2), these contributions are reimbursable.

Cost Sharing. One Task Force commented that § 208.23(f) refers to "Cost Sharing" but makes no distinction between "hard share," *i.e.*, cash contributions, and "soft share," *i.e.*, other value-added benefits provided by the Sponsoring Agency. We do not presently require Sponsoring Agencies to provide a cost share, either hard or soft, for preparedness or response funding. Please note that section 208.22(f) provides for cost sharing if it were required in the future. If we were to institute a cost-sharing requirement in the future, we would clearly indicate in the Cooperative Agreement whether

such cost share would be "hard" or "soft."

Equipment Ownership. Several Sponsoring Agencies commented that the Proposed Rule does not address ownership or disposition of equipment purchased under this program.

OMB Circulars A-87 and A-110 specify that equipment purchased with Federal Grant funds is the property of the grantee. However, title, use, management and disposition of equipment purchased under a grant or Cooperative Agreement is set out in 44 CFR 13.32, a government-wide rule to which DHS adheres. While the Sponsoring Agency has title to any equipment purchased with Federal preparedness and response Cooperative Agreement funds, DHS reserves the right to transfer title to the Federal Government or a third party that we may name, under 44 CFR 13.32(g). DHS would generally expect to limit its exercise of this right to instances when a Sponsoring Agency indicates or demonstrates that the Sponsoring Agency cannot fulfill its obligations under the Memorandum of Agreement.

Maximum Pay Rate Table. We received the most number of comments concerning the Maximum Pay Rate Table (Table) identified in the Proposed Rule. For clarity, we set forth here the applicability of the Table and the process we will follow for creating and updating the Table.

Section 208.32 defines the "Maximum Pay Rate Table" as "the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency." In that same section, "Affiliated Personnel" are defined as "individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers."

One Sponsoring Agency commented that the Table seemed to contradict the principle of cost neutrality set forth prominently in the Proposed Rule. However, as defined, the Table applies only to those individuals who are not normally employed by a Sponsoring Agency or Participating Agency, or whose affiliation with a Sponsoring Agency or Participating Agency is as a volunteer; that is, an individual whom the Sponsoring Agency or Participating Agency does not normally compensate in any way, at any rate.

The Table sets forth maximum rates for which we will reimburse the

Sponsoring Agency for compensation paid to those individuals while Activated. The Sponsoring Agency may choose to compensate these individuals at a higher rate, but we will not reimburse the increment above the maximum rate specified in the Table. Likewise, the Sponsoring Agency may choose to enter into a Participating Agency agreement with the individual's employer, rather than use the individual as an Affiliated Personnel, in which case the Table would not apply. Consequently, only a Sponsoring Agency's choice to exceed the maximum rates set forth in the Maximum Pay Rate Table would result in an uncompensated expenditure, and the Table would not violate the principle of cost neutrality.

A number of parties expressed concern that the Table was not provided concurrently with the publishing of the Proposed Rule. We chose not to delay the Proposed Rule until the Table could be developed. We have inserted a new section 208.12, Maximum Pay Rate Table, to establish the process for creating, updating and using the Table. We are also publishing the Table as a Notice in the **Federal Register** and are asking for comments on both the Interim Rule and the Table before publishing the final rule.

One Sponsoring Agency expressed concern that the rates set forth in the Table could not be used with respect to individuals employed by the Sponsoring Agency, and not when the individual would serve on the Task Force as Affiliated Personnel (e.g., a Sponsoring Agency fire department dispatcher affiliated with the US&R Task Force in a non-dispatcher role as a canine search specialist). Although the Table would not necessarily apply to reimbursement for salary and benefits for that individual, Sponsoring Agencies may use the rates in the Table as a guide for establishing compensation levels for Affiliated Personnel.

Affiliated Personnel. Several commenters noted that the rule can be interpreted to preclude the reimbursement of Backfill expenses for Affiliated Personnel under § 208.39(g). Those commenters expressed concern that, since the highly-trained civilians such as physicians, structural engineers and canine handlers are typically Affiliated Personnel, reimbursement for Backfill expenses is important to securing the participation of these individuals in the System. The restriction on Backfill costs for Affiliated Personnel could limit the ability of Sponsoring Agencies to recruit and retain these highly trained civilians.

However, the only permissible way to reimburse Affiliated Personnel for Backfill costs is through Participating Agencies—neither we nor the Sponsoring Agencies have contractual or employment relationships with the individuals Backfilling the jobs of Affiliated Personnel. If reimbursement for Backfill expenses is a problem for Affiliated Personnel, we encourage them to have their employers or professional association seek Participating Agency status. Participating Agency status is available to private, for-profit organizations under the revised definition of "Participating Agency" set forth in this Interim Rule. (See Definitions, § 208.2, *Participating Agency*, and § 208.12, *Maximum Pay Rate Table*.) Note, however, that compensation costs, for the purposes of reimbursement and Backfill, refer to the System Member's actual compensation, or the compensation of the individual who Backfills a position (which includes salary and benefits, as described in §§ 208.39 and 208.40), rather than billable or other rates that might be charged for services rendered to commercial clients or patients.

Creating, Updating and Using the Maximum Pay Rate Table. We have inserted a new section 208.12 in this rule to establish how we will create, update and use the Table to reimburse Affiliated Personnel (Task Force Physicians, Task Force Engineers, and Canine Handlers) and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency; the Table applies only to these named categories. Section 208.12 describes the method for determining maximum pay rates using United States Office of Personnel Management's (OPM) salary rates, and provides links to OPM's applicable salary rate tables and locality pay tables.

The section provides that DHS will review and update the Table periodically (at least annually). DHS is publishing the initial Table in the **Federal Register** as a Notice with request for comments. DHS will publish subsequent revisions to the Table as Notices in the **Federal Register**.

The section further states that a Sponsoring Agency may choose to pay Affiliated Personnel at a higher rate, but DHS will not reimburse the increment above the maximum rate specified in the Table.

Resupply and Logistics Costs During a Federal Activation. One Sponsoring Agency noted that, under § 208.38, we will not reimburse costs incurred for resupply and logistical support during Activation. That section states that resupply and logistical support needed

during Activation are the responsibility of the Joint Management Team (JMT). The Sponsoring Agency asked, "What happens if the Incident Management Team [now the JMT] cannot be established?"

During Activation, we are responsible for resupply and logistics. Currently, we accomplish this responsibility through either the JMT, which operates in the field, or the Emergency Support Function 9 (ESF-9),²² which operates from the National Emergency Operations Center, an emergency coordinating center located at FEMA headquarters. As DHS develops and evolves, we may change the names or functions of these teams; however, the responsibility for resupply and logistics will remain with us. Task Forces should not engage in resupply or logistical support during Activation unless coordinated through one of these teams. In extraordinary circumstances, *e.g.*, if the Task Force cannot make contact with either the JMT or the EST, the Task Force should follow the instructions in § 208.44, Reimbursement for other costs. Absent such circumstances, we will not reimburse costs incurred for resupply and logistical support during Activation.

Compensation for Exempt System Members. Several agencies commented on the proposed reimbursement for compensation paid to Exempt System Members, *i.e.*, System Members who are paid a salary, rather than an hourly wage, and are otherwise exempt from the Fair Labor Standards Act. One agency commented that reimbursement for Exempt System Members should be based on the employees' salary, converted to a 40-hour workweek and then paid at that rate on an hourly basis during Activation. Another agency commented that the different methods of compensation calculation for Exempt and non-exempt System Members will result in non-exempt System Members receiving a greater amount of compensation during Activation than Exempt System Members, who are typically more experienced firefighters holding higher ranks in the Sponsoring Agency or Participating Agency. This agency speculated that the method of compensation calculation used in the Proposed Rule would result in fewer chief officers (who are typically

classified as Exempt System Members) participating as System Members.

There are two guiding principles underlying our compensation calculation rules: (1) Cost neutrality; and (2) customary and usual practice. The compensation calculation system for Exempt System Members complies with both of these principles. If an individual is classified as an Exempt System Member in his or her regular position with the Sponsoring Agency or Participating Agency, then this individual will receive compensation on a daily basis, rather than an hourly basis, regardless of the number of hours the individual works in a day. The rule provides reimbursement to the Sponsoring Agency or Participating Agency on this basis—that is, for the amount that the individual would have customarily and usually received. If the Sponsoring Agency or Participating Agency customarily and usually compensates Exempt System Members by paying a salary and overtime, or customarily and usually awards compensatory time or another overtime substitute for hours worked above a predetermined threshold, then the Sponsoring Agency may request reimbursement for the overtime amount, or the liquidated value of the compensatory time or other overtime substitute, in accordance with §§ 208.39(e)(5)(ii) and (iii). In this way, this rule abides by the principle of cost neutrality.

One Sponsoring Agency asked that we examine the feasibility of giving Sponsoring Agencies the option of having chief officers appointed as Disaster Assistance Employees (DAE) (temporary DHS employees) during Activation. In that case, those officers would be temporary Federal employees, would probably take a reduction in pay, and would take vacation or administrative leave from the Sponsoring Agency or Participating Agency for the period of Activation. In turn, a DAE appointment might affect their pension and seniority rights. We believe that disadvantages of DAE appointments outweigh any benefits that chief officers might derive, and that the current language of this rule concerning Exempt System Members represents the best general practice.

One Sponsoring Agency asked whether, under § 208.39(e)(3), chiefs compensated based on a 56-hour workweek should be converted to a 40-hour workweek for purposes of calculating reimbursable compensation under the rule. This Sponsoring Agency also noted that compensating individuals who customarily and usually work a 56-hour workweek, by

converting their hourly wage rate to a 40-hour workweek, results in approximately 40 percent higher costs during Activation. Sponsoring Agencies and Participating Agencies that compensate employees based on a 56-hour workweek take advantage of the partial overtime exemption set forth in section 7(k) of the Fair Labor Standards Act. As explained herein, we require that Sponsoring Agencies and Participating Agencies disregard the section 7(k) partial exemption in calculating personnel costs, and we will reimburse personnel costs based on a 40-hour work week, as described in § 208.39 of this rule.

One Sponsoring Agency notes that the calculation of reimbursable personnel costs will place an extra burden on payroll staff, and there will most likely be personnel who will be eligible for overtime compensation immediately upon Activation since they have already exceeded the overtime threshold for that week. We have included an administrative allowance in the reimbursement for response costs, found at § 208.41, to compensate the Sponsoring Agency for this increased burden on payroll staff. We also provide for reimbursement of any additional salary and overtime costs in § 208.39(f), *e.g.*, those incurred because a System Member is eligible for overtime compensation immediately upon Activation.

Reimbursement for Personnel Costs for Equipment Cache Rehabilitation. Under § 208.43, we will reimburse Sponsoring Agencies for personnel costs associated with equipment cache rehabilitation up to the number of hours specified in the Demobilization Order.²³ One Sponsoring Agency stated that the number of hours specified in the Demobilization Order should be an estimate only, rather than a fixed limit, and asked whether there is an appeal process for the number of hours specified in the Demobilization Order, or another mechanism for requesting additional hours based on unforeseen circumstances. There is no appeal process for the number of hours specified in the Demobilization Order. However, if the Sponsoring Agency feels that unforeseen circumstances will prevent it from completing its equipment cache rehabilitation within the specified number of hours, the Sponsoring Agency should follow the

²² ESF-9, or Emergency Support Function 9, Urban Search and Rescue, is responsible to plan and coordinate the use of Urban Search and Rescue assets following an event that requires locating, extricating and providing immediate medical treatment of victims trapped in collapsed structures. ESF-9 also provides planning and coordination of US&R assets when they engage in other disaster-related assignments.

²³ A Demobilization Order is a DHS communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

procedures in § 208.44 for reimbursement of other costs.

Reimbursement for Other Costs.

Section 208.44 sets a procedure for Sponsoring Agencies to follow if the Sponsoring Agency or the Task Force believes that it must incur an expense not included in subpart C for which it expects to request reimbursement. Section 208.44 requires that the Sponsoring Agency request in writing permission from DHS to make the expenditure or, if advance permission in writing is not possible to obtain, to meet three criteria before making the expenditure, including requesting and receiving advance verbal approval.

One agency commented that during an extreme emergency, in particular during the initial 24- to 48-hours of an Activation, it can be difficult to obtain written or verbal approvals, and that personnel authorized to approve expenditures are not available 24 hours a day during this period. Moreover, this agency commented that Joint Management Teams, in the past, have left requests for resupply unanswered for extended periods of time. The agency recommended that we empower Task Force Leaders to make procurement decisions.

We feel that this comment addresses operational problems rather than regulatory issues. Many of these problems will be alleviated by the construction of the new DHS operations center that will be staffed 24 hours a day during an Activation, and by assuring that there is at least one person on duty in the operations center who holds delegated authority to authorize procurements. Moreover, the revised Equipment Cache List²⁴ provides for the purchase of multiple, back-up methods of communication to assure that Task Forces can communicate with the operations center under any circumstances. We believe that the rule controls the costs associated with Activation and limits duplicative procurement without compromising responder safety.

Advance of Funds. Section 208.45 states that we will provide the Sponsoring Agency with an advance of funds up to 75 percent of the estimated personnel costs of the Activation. Several agencies commented that we should increase this amount to 90 percent of the estimated personnel costs. These agencies commented that since personnel costs of an Activation

can exceed \$1 million, an advance up to 75 percent of that amount still leaves the Sponsoring Agency with approximately \$250,000 in outlays for personnel costs for which it must wait for up to 120 days or more for reimbursement. The financial burden of these outlays would be compounded in the event of multiple Activations within a relatively short time period.

We believe that up to 75 percent is the optimal amount for an advance of funds because it balances the need for funds against the possibility of overestimated funds. As one commenter pointed out, for many years we did not provide any advance of funds, and for more recent Activations we provided an advance equal to 25 percent of estimated personnel costs. The amount "up to 75 percent" is a result of our examination of personnel cost data from a number of previous Activations. It also recognizes the financial burden borne by the Sponsoring Agencies in carrying, even temporarily, these additional salary costs. However, Activations often last for a shorter period of time than we use to calculate the estimated personnel costs for the Activation, as was the case recently with Hurricane Isabel when teams were activated for fewer than 7 days. As one commenter pointed out, some percentage of personnel costs may be questioned and ultimately disallowed as a result of the reimbursement review process. For these reasons, at this time, we believe that up to 75 percent of estimated personnel costs is the best amount for an advance of funds. We expect to review Sponsoring Agencies' experience periodically under this provision, and will make revisions as warranted.

Deadline for Submission of Claims.

One agency commented that the deadline for submission of claims comes too soon after an Activation has ended. Currently, § 208.52 specifies that Sponsoring Agencies must submit claims for reimbursement within 90 days of the conclusion of the Activation. Section 208.52 also states that DHS may extend and specify the time limitation upon a written request and justification from the Sponsoring Agency. The commenting agency noted that it could take many weeks to obtain certain items, often because of manufacturers' inventory status. The agency stated that setting a deadline of 120 days would obviate the need for a Sponsoring Agency to apply for repeated extensions.

We believe that the 90-day timeframe for submission, with the opportunity for Sponsoring Agencies to apply for 30-day extensions, is the better policy. In the past, we found that Sponsoring

Agencies often do not submit claims for reimbursement in a timely manner. This tendency interferes with our ability administratively to "close out" the accounts we set up for each major disaster or emergency, and also results in Sponsoring Agencies carrying unreimbursed costs for longer periods of time. We believe that it is better to require submission of claims for reimbursement within 90 days of the conclusion of the Activation, while permitting Sponsoring Agencies to apply for 30-day extensions at their option.

Reevaluation and Potential Revision of the Rule. One agency commented that we should provide a date certain for reevaluation and potential revision of this rule. The agency believed that providing this date certain was important because some provisions of the rule will require additional discussion and development, and other issues may arise after the rule is implemented. We do not believe that there is a need to provide a date certain by which we will reevaluate and, if necessary, revise the rule. However, we will work with our State and Local Government partners through the National Urban Search and Rescue System Advisory Committee and its Legal Issues Working Group to evaluate this rule, measure its efficacy, and develop revisions as necessary.

Task Force Leader. One Sponsoring Agency commented that this rule should include a definition of the role and responsibilities of the Task Force Leader, the highest leadership position on a US&R Task Force. The commenting agency stated that "[t]he Task Force Leader is the individual during a deployment who is in control and responsible for the entire Task Force, in addition to reporting to FEMA (whether the FEMA Emergency Support Team (EST) or the IST [now JMT] the Task Force Leader is the individual that the Sponsoring Agency designates to represent the Sponsoring Agency both financially and legally while the Task Force is deployed."

We feel that the roles and responsibilities of the Task Force Leader should not be included in the rule. We have developed and published a Position Description for the Task Force Leader, and have described the roles and responsibilities of the Task Force Leader in several operational documents. These descriptions may change over time, and we want to retain flexibility by including these descriptions in operational documents rather than in the rule. Moreover, different Sponsoring Agencies have vested their Task Force Leaders with

²⁴ The *Equipment Cache List* is the DHS-issued list that defines: (a) The equipment and supplies that US&R will furnish to Sponsoring Agencies; and (b) the maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with DHS funds.

different levels of authority. For these reasons, we have not defined the roles and responsibilities of the Task Force Leader in the rule.

Use of Federally Purchased Equipment for Local Use in Daily Operations. One commenter noted that, in the Federalism Summary Impact Statement included with the Proposed Rule, we stated that "Equipment and supplies purchased with Federal funds may be used to respond to state disasters or emergencies." The commenter asked whether the intent of the rule was to prevent the use of federally purchased equipment for daily operations.

We intend the System to provide a Federal capability to respond to major disasters or emergencies involving structural collapse, weapons of mass destruction, or other incidents that the President declares. A Sponsoring Agency may use equipment and supplies purchased with Federal funds to respond to disasters or emergencies requiring urban search and rescue response at the state and local level, and if necessary, to repair or replace equipment so used at the Sponsoring Agency's expense. However, we do not intend that Sponsoring Agencies use federally purchased equipment in routine, day-to-day operations.

Indirect Costs. One Sponsoring Agency commented on our prohibition of reimbursement for indirect costs related to response, and our 7.5 percent limitation on indirect costs related to preparedness. The commenting agency noted that this limitation on indirect costs is inconsistent with other FEMA programs and diverges from standard Federal indirect cost percentages. The commenting agency stated that this limitation could threaten the ability of that Sponsoring Agency to remain in the System, stating that the "work burden formulas presuppose economies of scale for a larger, pre-existing agency."

We brought this issue to the National US&R Advisory Committee, which recommended retention of the indirect costs policy as in the proposed rule. We agree. This limitation is not inconsistent with other limitations applicable to FEMA programs. Accordingly, we have not changed this section. Note that this limitation applies only to Preparedness Cooperative Agreements, which apply over the course of at least one year and to which indirect cost principles can be applied readily. Except as provided in § 208.41, we allow no indirect costs under Response Cooperative Agreements. US&R deployments are most often short-term, on the order of 10–14 days. Consistent with section 407 of the Stafford Act, we will allow the

administrative allowance listed in § 208.41 of this part in lieu of attempting to establish indirect cost rates for short-term deployments.

Administrative Procedure Act Determination

We are publishing this Interim Rule under the Administrative Procedure Act, 5 U.S.C. 553, with our request for public comments. Concurrently with publication of the Interim Rule, we are publishing the Maximum Pay Rate Table (Table) in the **Federal Register** as a Notice. We published a Proposed Rule, National Urban Search and Rescue Response System, on December 18, 2002, 67 FR 77627–77640, and received over 30 comments from various Task Forces in the National US&R Response System. We discuss the comments in the preamble of the Interim Rule, indicating where we agree with the comments and have made changes, and also where we do not agree with the comments.

We did not have the Table prepared at the time we published the Proposed Rule but received a large number of comments and questions about the Table. To provide an opportunity for comment before publishing the final rule, and because of the delay between the date of the Proposed Rule and the Interim Rule, we request that interested parties comment within 45 days of today's publication.

The National US&R Response System provides a number of public services that are unique within the Federal Government. Members are experienced and trained professionals highly skilled in the often dangerous roles of searching for, extricating and providing initial medical care for victims from collapsed buildings, whether collapsed by natural or manmade causes. The searching is important to the public to ensure that every effort has been made to rescue people still alive within a collapsed structure. Members also have an important role in finding the bodies of those killed in the collapse, so that victims might be identified and returned to grieving families. The tasks performed and the dangers inherent in the work benefit other firefighters and disaster responders who do not have the specialized training and experience of the National US&R Response System Members and who are not put at risk by entering the collapsed structures when US&R teams are present.

The Interim Rule is effective today, the date of publication. There is an urgent need within the National US&R Response System to standardize financial, administrative and operational functions among the 28

Task Forces located in 19 States. These needs include codifying the relationship between the Department of Homeland Security (DHS) and the Sponsoring Agencies of the 28 Task Forces, and standardizing the relationships of Sponsoring Agencies with their Participating Agencies and Affiliated Personnel. Efforts to standardize the Memoranda of Agreement between DHS and the Sponsoring Agencies, and in turn, the agreements between the Sponsoring Agencies and Participating Agencies and Affiliated Personnel, are essential to the effective functioning of the System and must be completed soon to inform, guide and govern all System participants uniformly in their respective roles, responsibilities and activities.

In the years since September 11, 2001, Congress has appropriated increased funds to US&R for equipment, training, and other measures to ensure that each Task Force is fully staffed, trained and available for whatever disaster they may be called upon for help. It is imperative and urgent that there be full accountability for the funds granted to the Sponsoring Agencies, and that there be uniform standards that the Sponsoring Agencies can apply in the performance of their US&R responsibilities. This rule provides those standards; it is urgent that they be in effect as soon as possible.

The direct effect of this rule is on the 28 Sponsoring Agencies, their Participating Agencies, and Affiliated Personnel—a relatively small, well-defined universe. The Sponsoring Agencies, the Advisory Committee of the National US&R Response System (Advisory Committee),²⁵ the Working Groups²⁶ under the Advisory Committee, and others associated with the National US&R Response System have frequently and repeatedly requested publication and implementation of this rule, which they urgently need to fulfill their obligations to the System, themselves and their organizations. As matters of sound policy, planning and management for the entire System, it is important to make the rule effective upon publication.

Good cause exists and it is in the public interest to make this Interim Rule

²⁵ The Advisory Committee of the National US&R Response System provides advice, recommendations, and counsel on the continuing development and maintenance of a National US&R Response System to the Under Secretary for Emergency Preparedness and Response.

²⁶ The System has several specialized Working Groups, e.g., command and general staff, medical, legal issues, training, etc., that provide professional and technical advice on US&R issues to DHS through the National Advisory Committee.

effective upon publication (and to request comments on the Interim Rule and on the Table as published separately today as a Notice). DHS will review and evaluate any comments that it receives and will publish the final rule at a later date.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) categorically excludes from actions such as the preparation, revision, and adoption of regulations, and specifically 44 CFR 10.8(d)(2)(xviii)(C), which relates to planning and administrative activities in support of emergency and disaster response and recovery, including deployment of urban search and rescue teams. Accordingly, we have not prepared an environmental assessment or environmental impact statement for this rule.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a "significant regulatory action" is subject to OMB review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In determining whether to proceed with the formulation and publication of this rule, we considered three alternatives: maintain the status quo ante; manage the program through administrative directives; and cancel the program.

Maintain the Status Quo Ante. The National US&R Response System has operated since the early 1990s without formal regulations. The first ten years or so were formative years with a great deal of flux. Federal appropriations were minimal until the events following September 11, 2001, which led to major changes in planning, operations, management, training and funding.

Twenty US&R teams responded to the World Trade Center and five responded to the Pentagon. After-action evaluations showed the need for greater interoperability of equipment, consistency in training and operating across the 28 teams, and many other factors to permit 28 disparate units in 19 States to perform as a cohesive whole. Congress appropriated larger sums to support the program, mandating that the program not add new task forces until existing task forces were fully equipped and trained. Spurred by the response of Congress and the Administration, we redoubled efforts to standardize the financing, administration and operation of the National US&R Response System.

Under the *status quo ante* and the low level of Federal funding, we had little leverage to standardize the program. With increased appropriations and expanding mission that followed September 11, 2001 (e.g., response to acts of terrorism and weapons of mass destruction events, response to hurricanes), operating without formal regulations was no longer tenable. Sound management and responsible stewardship of the program demand formal regulations. For these reasons, we rejected the *status quo ante*.

Management by Administrative Directives. We rejected this alternative on grounds that administrative directives do not have the force of law, tend to be piecemeal, and do not adequately support our need for standardized practices within the US&R program. In contrast, the rule will have the force of law and will concisely support our need to standardize the financing, administration and operation of the US&R program.

Cancel the Program. The US&R program grew out of the evident need to have highly skilled, specially trained and equipped personnel swiftly available to search for and extricate victims from collapsed buildings, whether from earthquakes and other natural causes, acts of terrorism, accidents or other human causes. The need is greater today than perceived in the late 1980s and early 1990s. The program has garnered a well- and hard-earned recognition of its effectiveness, with strong support from Congress, the Administration, and its Sponsoring and Participating Agencies. With that continuing support, cancellation of the program is not a feasible alternative.

Interim Rule. We (FEMA) published a Proposed Rule, National Urban Search and Rescue Response System, on December 18, 2002, 67 FR 77627-77640. During the 45-day comment period, we received about 30 comments from Sponsoring Agencies, one from a

Participating Agency, one from a Member of Congress, and none from the public at large. We reviewed the comments, accepting some, rejecting some. This preamble and Interim Rule reflect the decisions made regarding the comments that we received.

When we published the Proposed Rule, we mentioned, but had not yet prepared, the Maximum Pay Rate Table (Table). In order to have that part of the rule on which we had received comments go into effect, and to obtain public comments on the Table, we elected to publish the rule as an Interim Rule, and, concurrently to publish the Table as a Notice, with request for comments.

Economic Significance of the Rule. This rule will not have an annual effect on the economy of \$100 million or more and is not an economically significant rule under Executive Order 12866. The rule establishes the relationship between the Sponsoring Agencies of the Urban Search & Rescue (US&R) Task Forces and DHS, funding for preparedness and response activities, including the acquisition of equipment and supplies and training, and the eligibility of Task Forces to receive and maintain Federal excess property.

This interim rule impacts 28 Sponsoring Agencies, 26 of which are from local communities, 2 are associated with state universities. All of the communities have populations greater than 50,000. Most of the Sponsoring Agencies have agreements with Participating Agencies for additional support to meet the staffing, equipment and training requirements of the National US&R Response System. US&R-related costs of Participating Agencies are paid by DHS through the Sponsoring Agencies. Similarly, expenses of Affiliated Personnel are reimbursed through the Sponsoring Agencies.

DHS has designed the National US&R Response System to be as cost neutral to Sponsoring Agencies as Federal law authorizes. DHS acquires equipment and supplies, pays for training, meetings and related travel, lodging, and per diem expenses, and attempts to cover Sponsoring Agencies' preparedness costs through preparedness Cooperative Agreements. When DHS activates a US&R Task Force we reimburse the Sponsoring Agency for 100 per cent of its direct eligible costs incurred, including overtime and Backfill costs, and indirect costs capped at 7.5 percent of direct costs, under the terms of the response Cooperative Agreements. Sponsoring Agencies will incur certain paperwork burdens and expenses, which are described and quantified

below in the materials on the Paperwork Reduction Act. We expect that our Cooperative Agreements and their associated indirect cost rates will cover the eligible costs that the Sponsoring Agencies incur to participate in the National US&R Response System.

Costs to DHS to administer the National US&R Response System include the salaries and expenses of an 8-person staff, and the indirect staff costs for financial, acquisition, logistics and other administrative services provided by DHS and FEMA. Current appropriations limit administrative costs to 3 percent of the total amount appropriated for US&R.

FEMA's planning and program guidance for fiscal years 2005 through 2009 set funding levels of \$6.438 million for the National US&R Response System, representing the baseline nondisaster-specific budget for operating expenses. In the past two years, congressional annual appropriations for US&R were \$60 million, most of which US&R passed to the Sponsoring Agencies pursuant to Cooperative Agreements. FEMA passes the amounts appropriated to the Sponsoring Agencies in preparedness Cooperative Agreements funded 100 percent by the Federal Government to cover planning, training, equipment or other essentials to fulfill the US&R mission, which do not impose conditions on the Sponsoring Agencies making them economically significant. Nor would Cooperative Agreement funding adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

This rule is a significant regulatory action, but not an economically significant regulatory action within the definition of section 3(f) of Executive Order 12866, and it adheres to the principles of regulation of the Executive Order. The Office of Management and Budget has reviewed this rule under the provisions of the Executive Order.

Regulatory Flexibility Act, 5 U.S.C. 601

Under the Regulatory Flexibility Act, agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). The Act also provides that, if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

This rule standardizes the financing, administration and operation of the

National Urban Search and Rescue Response System (System or US&R), which FEMA established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The System currently comprises 28 US&R Task Forces in 19 States. A State agency or local public safety agency (Sponsoring Agency) typically sponsors a Task Force,²⁷ staffed primarily by local fire department and emergency services personnel, and include Joint Management Teams (JMT) and other overhead or technical teams. None of the Sponsoring Agencies are in communities with populations fewer than 50,000. The governments of the Sponsoring Agencies are urban or State instrumentalities and none qualify as a "small governmental jurisdiction" within the meaning of 5 U.S.C. 601(5).

Some of the Participating Agencies are small businesses, such as engineering firms and HMOs. DHS reimburses Sponsoring Agencies for the eligible costs that the Sponsoring Agencies incur in reimbursing their Participating Agencies. DHS expects Participating Agencies to receive full reimbursement for the salaries and expenses of their personnel who are participating System Members, indirect costs up to 7.5 percent, per diem, travel and related costs when Task Forces activated, and backfill expenses.

DHS has designed the US&R program to be as cost neutral to Sponsoring Agencies as Federal law authorizes. When DHS activates a US&R Task Force it reimburses the Sponsoring Agency for its direct costs incurred, including overtime and Backfill costs, and indirect costs capped at 7.5 percent of direct costs. Upon activation, System Members become Temporary Excepted Federal Volunteers entitled to the benefits of the Federal Employees Compensation Act (FECA) and the Federal Tort Claims Act (FTCA). In some instances, State workers' compensation benefits exceed those available under FECA, and the

²⁷ The Task Forces also respond to disasters and emergencies in their home states as State resources. DHS does not directly reimburse Sponsoring Agencies of the Task Forces for the costs that they incur when deploying in their home state, although in a State deployment Task Forces may use equipment that they have purchased with DHS grant funds and Federal property that is in their custody. Subpart C of this rule does not cover in-state deployment of US&R resources. However, Federal reimbursement for the cost of an in-state deployment may be available through DHS's Public Assistance Program under regulations published at 44 CFR part 206. In addition, the Office of Foreign Disaster Assistance of the U.S. Agency for International Development (USAID) often uses the services of certain US&R Task Forces to deliver humanitarian assistance abroad under agreements to which DHS is not a party. The rule does not affect the relationships between USAID and the Sponsoring Agencies of the Task Forces.

difference between the State benefits and the Federal benefits may have to be borne by the Sponsoring Agency.

US&R Task Forces also must maintain minimum training requirements that DHS prescribes. Under current interpretations by the Department of Justice, the FTCA covers System Members during Task Force activations, but does not apply to training activities. This lack of FTCA coverage during training is a potential liability that a Sponsoring Agency might incur, but such a circumstance has not occurred in 15 years of experience. DHS is working with the Department of Justice to determine what measures DHS could take to provide liability coverage for System Members during US&R training events.

DHS assumes that the professional skills necessary for preparation of the reports and records are within the capabilities of the Sponsoring and Participating Agencies. DHS further assumes that Sponsoring and Participating Agencies incur no extra, unreimbursed costs for sound administration and accountability that Federal Cooperative Agreements require of any recipient of such awards. We have no basis for estimating the expected cost or range of costs per impacted Sponsoring or Participating Agency.

DHS is not aware of any rules that may duplicate, overlap or conflict with this rule. In our discussion of E.O. 12866 above, we considered several alternatives to this rule, including *status quo ante*, cancellation of the program, management by program directives, and this interim rule. None of the alternatives to this rule met DHS needs to standardize the financing, administration and operation of the US&R System; none provided differing compliance or reporting requirements, or clarified, consolidated, or simplified compliance and reporting, or exempted any of the Sponsoring Agencies from coverage of the rule.

For the reasons stated, we certify under 5 U.S.C. 605(b) that this Interim Rule will not have a significant economic impact on a substantial number of small entities and does not apply to this interim rule.

Paperwork Reduction Act of 1995

DHS has determined that the implementation of this rule is subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As the Paperwork Reduction Act of 1995 requires and, concurrently with this rule, we have submitted a request for Office of Management and Budget (OMB) review and approval of a new collection of

information, which is contained in this rule. The collection of information complies with provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). We invite the general public to comment on the collection of information.

Collection of Information

Title: Urban Search and Rescue Program.

US&R grant application forms approved by OMB under Control Number 1660-0025, which expires July 31, 2007, are:

Form Numbers: SF 424, Application for Federal Assistance; DHS Form 20-10, Financial Status Report; DHS Form 20-16, Summary Sheet for Assurances

and Certifications; DHS Form 20-16A, Assurances—Non-Construction Programs; DHS Form 20-16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; DHS Form 20-20, Budget Information—Non-Construction Programs; and SF LLL, Disclosure of Lobbying Activities.

Abstract: This information collection is to implement the National Urban Search and Rescue System (US&R), by which DHS provides specialized lifesaving assistance during major disaster or emergency. US&R operational activities include locating, extricating and providing on-site medical treatment to victims trapped in

collapsed structures, weapons of mass destruction events, and when assigned, incident command or coordination of other operational activities. In order to implement the US&R program DHS must collect certain types of information, including grant applications, budget and budget narrative, financial status reports, assurances and certifications, performance information, and requests for advances or reimbursement on forms approved by OMB under Control Number 1660-0025.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 803 hours. A breakdown of the burden follows:

DHS forms	No. of responders (A)	Frequency of response (B)	Hours per response and record-keeping (C)	Annual burden hours (A x B x C)
The following forms were approved under 1660-0025:				
SF-424 Application for Federal Assistance	28	1	1 hour	28 hours.
DHS Form 20-10 Financial Status Report	28	1	1 hour	28 hours.
DHS Forms 20-16, 20-16A, 20-16C, Summary Sheet for Assurances and Certifications.	28	1	30 minutes	14 hours.
SF LLL, Disclosure of Lobbying Activities	28	1	10 minutes	5 hours.
DHS Form 20-20, Budget Information Non-Construction Programs and Budget Narrative.	28	2	9 hours	504 hours.
SF 270, Request for Advance or Reimbursement	28	2	4 hours	224 hours.
Subtotal		224		803 hours.

OMB Number: New.

Abstract: In order to implement the US&R program, DHS must collect certain types of information not included in OMB Control Number

1660-0025, including memoranda of agreement, program narrative statements, grant awards, progress reports, extension or change requests, closeout information and audits.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 1181 hours. A breakdown of the burden follows:

DHS forms	No. of responders (A)	Frequency of response (B)	Hours per response and recordkeeping (C)	Annual burden hours (A x B x C)
The following are new collections:				
Narrative Statement	28	2	4 hours	224 hours.
Progress Reports	28	2	2 hours	112 hours.
Extension or Change Requests	5	1	1 hour	5 hours.
Audits of States, Local Governments, and Non-Profit Organizations.	28	1	30 hours	840 hours.
Memoranda of Agreement	28	1	(¹)	8
Subtotal		145		1181 hours.
Total hours		369		1984 hours.

¹ After we publish the final rule, we will prepare a standardized, streamlined memorandum of agreement in consultation with the National US&R Response System Advisory Committee and its Legal Issues Working Group. When completed, we will make a second Paperwork Reduction Act submission to OMB.

Estimated Times and Costs: The approximate annual salary of State and local staff who will complete the forms is \$35,000. The approximate hourly rate of pay is \$18.90 (\$35,000 divided by 1850 hours). The total cost to grantees is estimated to be \$37,498.

The cost to DHS is largely personnel salary costs to review and analyze the information collected on these forms—for all DHS grant programs, not just US&R grants, which is a significant portion of grants management annual work. We estimate that for the US&R program, DHS Headquarters would

expend approximately 672 hours on analysis, or an average of 24 hours per program. We estimate the cost to DHS to be \$14,112 (672 hours times \$21 per hour of staff work). Printing costs are minimal because the forms are available in electronic format.

The total annual estimated time and costs are 1984 hours and \$37,498 cost to applicants and \$14,112 cost to DHS. This calculation is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rates for those individuals responsible for collecting the information or completing the forms. The new collection is required for sound grants management and compliance with OMB Circulars and DHS regulations.

FOR FURTHER INFORMATION CONTACT:

Contact Michael Tamillow, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Washington, DC 20472, telephone (202) 646-2549, facsimile (202) 646-4684, or e-mail mike.tamillow@dhs.gov for additional information. You may contact Muriel B. Anderson for copies of the proposed collection of information at (202) 646-2625 or (facsimile) (202) 646-3347, or e-mail informationcollections@dhs.gov.

Executive Order 13132 Federalism—Federalism Summary Impact Statement

Executive Order 13132 requires DHS to develop a process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” Such policies are defined in the Executive Order to include rules that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

We have analyzed this interim rule in accordance with the principles and criteria in the Executive Order and has determined that this interim rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule imposes no mandates on State or local governments; participation in the National US&R Response System is strictly voluntary. Moreover, one of the most significant objectives of this program is to build State and local US&R capability. The US&R program recognizes the primary role of State and local governments in responding to disasters and emergencies. Equipment and supplies purchased with Federal funds may be used to respond to in-state disasters and emergencies. The teams may only be deployed across State lines when released by their home State. The assistance these teams provide, like

other assistance under the Stafford Act, is only furnished when disaster or emergency needs exceed the combined State and local capabilities and the Governor requests the assistance. Therefore, we certify that this interim rule does not have federalism implications as defined in Executive Order 13132.

While this interim rule does not have federalism implications, this rule has been developed through a collaborative process with representatives of State and local governments. As noted above, the Legal Issues Working Group, a subgroup of the National US&R Response System Advisory Committee, developed the original draft of these regulations. The National US&R Response System presented a draft to DHS. The Legal Issues Working Group and the National US&R Response System Advisory Committee both comprised Federal, State and Local Government officials, as well as representatives of labor organizations, some of whose members serve on the US&R Task Forces.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. The rule is not a “major rule” within the meaning of that Act. It standardizes the financing, administration and operation of the National Urban Search and Rescue Response System, a cooperative effort of the Department of Homeland Security, participating State emergency management agencies and local public safety agencies across the country.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have “significant adverse effects” on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This rule is subject to the information collection requirements of the Paperwork Reduction Act and OMB has assigned Control No. 1660-0025. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 208

Disaster assistance, Grant programs.
■ Accordingly, we add part 208 to title 44, chapter I of the Code of Federal Regulations, as follows:

PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

Subpart A—General

- Sec.
208.1 Purpose and scope of this part.
208.2 Definitions of terms used in this part.
208.3 Authority for the National US&R Response System.
208.4 Purpose for System.
208.5 Authority of the Director of the Response Division (Director).
208.6 System resource reports.
208.7 Enforcement.
208.8 Code of conduct.
208.9 Agreements between Sponsoring Agencies and Participating Agencies.
208.10 Other regulations.
208.11 Federal status of System Members.
208.12 Maximum Pay Rate Table.
208.13–208.20 [Reserved]

Subpart B—Preparedness Cooperative Agreements

- 208.21 Purpose.
208.22 Preparedness Cooperative Agreement process.
208.23 Allowable costs under Preparedness Cooperative Agreements.
208.24 Purchase and maintenance of items not listed on Equipment Cache List.
208.25 Obsolete equipment.
208.26 Accountability for use of funds.
208.27 Title to equipment.
208.28–208.30 [Reserved].

Subpart C—Response Cooperative Agreements

- 208.31 Purpose.
208.32 Definitions of terms used in this subpart.
208.33 Allowable costs.
208.34 Agreements between Sponsoring Agencies and others.
208.35 Reimbursement for Advisory.
208.36 Reimbursement for Alert.
208.37 Reimbursement for equipment and supply costs incurred during Activation.
208.38 Reimbursement for re-supply and logistics costs incurred during Activation.
208.39 Reimbursement for personnel costs incurred during Activation.
208.40 Reimbursement of fringe benefit costs during Activation.
208.41 Administrative allowance.
208.42 Reimbursement for other administrative costs.
208.43 Rehabilitation.
208.44 Reimbursement for other costs.
208.45 Advance of funds.
208.46 Title to equipment.
208.47–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

- 208.51 General.
208.52 Reimbursement procedures.

- 208.53–208.59 [Reserved]
 208.60 Determination of claims.
 208.61 Payment of claims.
 208.62 Appeals.
 208.63 Request by DHS for supplemental information.
 208.64 Administrative and audit requirements.
 208.65 Mode of transmission.
 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.
 208.67–208.70 [Reserved]

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart A—General

§ 208.1 Purpose and scope of this part.

(a) *Purpose.* The purpose of this part is to prescribe policies and procedures pertaining to the Department of Homeland Security's (DHS) National Urban Search and Rescue Response System.

(b) *Scope.* This part applies to Sponsoring Agencies and other participants in the National Urban Search and Rescue Response System that have executed agreements governed by this part. Part 206 of this chapter does not apply to activities undertaken under this part, except as provided in §§ 208.5 and 208.10 of this part. This part does not apply to reimbursement under part 206, subpart H, of this chapter.

§ 208.2 Definitions of terms used in this part.

(a) *General.* Any capitalized word in this part is a defined term unless such capitalization results from the application of standard capitalization or style rules for Federal regulations. The following definitions have general applicability throughout this part:

Activated or *Activation* means the status of a System resource placed at the direction, control and funding of DHS in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

Activation Order means the DHS communication placing a System resource under the direction, control, and funding of DHS.

Advisory means a DHS communication to System resources indicating that an event has occurred or DHS anticipates will occur that may require Alert or Activation of System resources.

Alert means the status of a System resource's readiness when triggered by an Alert Order indicating that DHS may Activate the System resource.

Alert Order means the DHS communication that places a System resource on Alert status.

Assistance Officer means the DHS employee who has legal authority to bind DHS by awarding and amending Cooperative Agreements.

Backfill means the personnel practice of temporarily replacing a person in his or her usual position with another person.

Cooperating Agency means a State or Local Government that has executed a Cooperative Agreement to provide Technical Specialists.

Cooperative Agreement means a legal instrument between DHS and a Sponsoring Agency or Cooperating Agency that provides funds to accomplish a public purpose and anticipates substantial Federal involvement during the performance of the contemplated activity.

Daily Cost Estimate means a Sponsoring Agency's estimate of Task Force personnel compensation, itemized fringe benefit rates and amounts including calculations, and Backfill expenditures for a 24-hour period of Activation.

Deputy Director means the Deputy Director of the Response Division, Emergency Preparedness and Response Directorate, Department of Homeland Security, or other person that the Director designates.

DHS means the Department of Homeland Security.

Director means the Director of the Response Division, Emergency Preparedness and Response Directorate, DHS.

Disaster Search Canine Team means a disaster search canine and handler who have successfully completed the written examination and demonstrated the performance skills required by the Disaster Search Canine Readiness Evaluation Process. A disaster search canine is a dog that has successfully completed the DHS Disaster Search Canine Readiness Evaluation criteria for Type II or both Type II and Type I.

Emergency means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Equipment Cache List means the DHS-issued list that defines:

(1) The equipment and supplies that US&R will furnish to Sponsoring Agencies; and

(2) The maximum quantities and types of equipment and supplies that a Sponsoring Agency may purchase and maintain with DHS funds.

Federal Excess Property means any Federal personal property under the control of a Federal agency that the agency head or a designee determines is not required for its needs or for the discharge of its responsibilities.

Federal Response Plan means the signed agreement among various Federal departments and agencies that provides a mechanism for coordinating delivery of Federal assistance and resources to augment efforts of State and Local Governments overwhelmed by a Major Disaster or Emergency, supports implementation of the Stafford Act, as well as individual agency statutory authorities, and supplements other Federal emergency operations plans developed to address specific hazards.

Joint Management Team or *JMT* means a multi-disciplinary group of National Disaster Medical System (NDMS), Urban Search and Rescue (US&R), and other specialists combined to provide operations, planning, logistics, finance and administrative support for US&R and NDMS resources, and to provide technical advice and assistance to States and Local Governments.

Local Government means any county, city, village, town, district, or other political subdivision of any State; any federally recognized Indian tribe or authorized tribal organization; and any Alaska Native village or organization.

Major Disaster means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, that in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, Local Governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Memorandum of Agreement (MOA) means the document signed by DHS, a Sponsoring Agency and its State that describes the relationship of the parties with respect to the National Urban Search & Rescue Response System.

Participating Agency means a State or Local Government, non-profit organization, or private organization

that has executed an agreement with a Sponsoring Agency to participate in the National US&R Response System.

Personnel Rehabilitation Period means the period allowed by DHS for a person's rehabilitation to normal conditions of living following an Activation.

Preparedness Cooperative Agreement means the agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency to develop and maintain System capabilities and operational readiness.

Program Directive means guidance and direction for action to ensure consistency and standardization across the National US&R Response System.

Program Manager means the individual, or his or her designee, within DHS who is responsible for day-to-day administration of the National US&R Response System.

Program Office means the organizational entity within DHS that is responsible for day-to-day administration of the National US&R Response System.

Response Cooperative Agreement means an agreement between DHS and a Sponsoring Agency for reimbursement of allowable expenditures incurred by the Sponsoring Agency as a result of an Alert or Activation.

Sponsoring Agency means a State or Local Government that has executed an MOA with DHS to organize and administer a Task Force.

Stafford Act means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia or the Republic of the Marshall Islands.

Support Specialist means a person participating in the System who assists the Task Force with administrative or other support during mobilization, ground transportation and demobilization as directed.

System or National US&R Response System means the national US&R response capability administered by DHS.

System Member means any Task Force Member, JMT Member, Technical Specialist, Support Specialist or Disaster Search Canine Team.

Task Force means an integrated US&R organization of multi-disciplinary resources with common communications and a leader, organized

and administered by a Sponsoring Agency and meeting DHS standards.

Task Force Member means a person occupying a position on a Task Force.

Technical Specialist means a person participating in the System contributing technical knowledge and skill who may be placed on Alert or Activated as a single resource and not as a part of a JMT or a Task Force.

US&R means urban search and rescue, the process of searching for, extricating, and providing for the immediate medical stabilization of victims who are entrapped in collapsed structures.

(b) Additional definitions. Definitions for certain terms that apply only to individual subparts of this part are located in those subparts.

§ 208.3 Authority for the National US&R Response System.

(a) *Enabling legislation.* The Federal Emergency Management Agency established and operated the System under the authority of §§ 303, 306(a), 306(b), 403(a)(3)(B) and 621(c) of the Stafford Act, 42 U.S.C. 5144, 5149(a), 5149(b), 5170b(a)(3)(B) and 5197(c), respectively. Section 503 of the Homeland Security Act of 2002, 6 U.S.C. 313, transferred the functions of the Director of FEMA to the Secretary of Homeland Security. The President redelegated to the Secretary of Homeland Security in Executive Order 13286 those authorities of the President under the Stafford Act that had been delegated previously to the Director of FEMA under Executive Order 12148.

(b) *Implementing plan.* The National Response Plan identifies DHS as the primary Federal agency with responsibility for Emergency Support Function 9, Urban Search and Rescue.

§ 208.4 Purpose for System.

It is DHS policy to develop and provide a national system of standardized US&R resources to respond to Emergencies and Major Disasters that are beyond the capabilities of affected State and Local Governments.

§ 208.5 Authority of the Director of the Response Division (Director).

(a) *Participation in activities of the System.* The Director is responsible for determining participation in the System and any activity thereof, including but not limited to whether a System resource is operationally ready for Activation.

(b) *Standards for and measurement of System efficiency and effectiveness.* In addition to the authority provided in § 206.13 of this chapter, the Director may establish performance standards

and assess the efficiency and effectiveness of System resources.

§ 208.6 System resource reports.

(a) *Reports to Director.* The Director may request reports from any System resource relating to its activities as part of the System.

(b) *Reports to FEMA Regional Directors.* Any FEMA Regional Director may request through the Director reports from any System resource used within or based within the Regional Director's jurisdiction.

(c) *Audits, investigations, studies and evaluations.* DHS and the General Accounting Office may conduct audits, investigations, studies, and evaluations as necessary. Sponsoring Agencies, Participating Agencies and System Members are expected to cooperate fully in such audits, investigations, studies and evaluations.

§ 208.7 Enforcement.

(a) *Remedies for noncompliance.* In accordance with the provisions of 44 CFR 13.43, if a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member materially fails to comply with a term of a Cooperative Agreement, Memorandum of Agreement, System directive or other Program Directive, the Director may take one or more of the actions provided in 44 CFR 13.43(a)(1) through (5). Any such enforcement action taken by the Director will be subject to the hearings, appeals, and effects of suspension and termination provisions of 44 CFR 13.43(b) and (c).

(b) The enforcement remedies identified in this section, including suspension and termination, do not preclude a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member from being subject to "Debarment and Suspension" under E.O. 12549, as amended, in accordance with 44 CFR 13.43(d).

(c) *Other authority for sanctions.* Nothing in this section limits or precludes the application of other authority to impose civil or criminal sanctions, including 42 U.S.C. 5156.

§ 208.8 Code of conduct.

The Director will develop and implement a code of conduct for System Members acting under DHS's direction and control. Nothing in this section or the DHS code of conduct will limit the authority of a Sponsoring Agency, Participating Agency or Cooperating Agency to apply its own code of conduct to its System Members or employees. If the DHS code is more restrictive, it controls.

§ 208.9 Agreements between Sponsoring Agencies and Participating Agencies.

Every agreement between a Sponsoring Agency and a Participating Agency regarding the System must include a provision making this part applicable to the Participating Agency and its employees who engage in System activities.

§ 208.10 Other regulations.

The following provisions of title 44 CFR, Chapter I also apply to the program in this part:

(a) Section 206.9, which deals with the non-liability of DHS in certain circumstances.

(b) Section 206.11, which prescribes nondiscrimination in the provision of disaster assistance.

(c) Section 206.14, which deals with criminal and civil penalties.

(d) Section 206.15, which permits recovery of assistance by DHS.

§ 208.11 Federal status of System Members.

The Director will appoint all Activated System Members as temporary excepted Federal volunteers. The Director may appoint a System Member who participates in Alert activities as such a Federal volunteer. The Director may also appoint each System Member who participates in DHS-sanctioned preparedness activities as a temporary excepted Federal volunteer. DHS intends these appointments to secure protection for such volunteers under the Federal Employees Compensation Act and the Federal Tort Claims Act and do not intend to interfere with any preexisting employment relationship between a System Member and a Sponsoring Agency, Cooperating Agency or Participating Agency. System Members whom DHS appoints as temporary excepted Federal volunteers will not receive any compensation or employee benefit directly from the United States of America for their service, but will be compensated through their Sponsoring Agency.

§ 208.12 Maximum Pay Rate Table.

(a) *Purpose.* This section establishes the process for creating and updating the Maximum Pay Rate Table (Table), and the Table's use to reimburse Affiliated Personnel (Task Force Physicians, Task Force Engineers, and Canine Handlers) and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. Section 208.32 defines the "Maximum Pay Rate Table" as "the DHS-issued table that identifies the maximum pay rates for

selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency." In that same section, the term "Affiliated Personnel" is defined as "individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers."

(b) *Scope of this section.* (1) The Maximum Pay Rate Table applies to those individuals who are not normally employed by a Sponsoring Agency or Participating Agency, or whose affiliation with a Sponsoring Agency or Participating Agency is as a volunteer; that is, an individual whom the Sponsoring Agency or Participating Agency does not normally compensate in any way, at any rate.

(2) The Table also applies to Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(c) *Method for determining maximum pay rates.* (1) DHS uses the United States Office of Personnel Management's salary rates, computed under 5 U.S.C. 5504, as the basis for the maximum pay rate schedule. DHS considers System members' experience and sets maximum pay rates at the maximum grade, middle step for each position, which demonstrates an experience level of five years.

(2) The Office of Personnel Management (OPM) publishes salary and locality pay schedules each calendar year.

(i) *Physicians.* DHS uses the latest Special Salary Rate Table Number 0290 for Medical Officers (Clinical) Worldwide for physicians. The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/SSR/HTML/0290.asp>.

(ii) *Engineers and Canine Handlers.* DHS uses the latest General Schedule pay scale for both positions. Both specialties are compared to the General Schedule pay scale to ensure parity with like specialties on a task force (canine handlers are equated with rescue specialists). The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/html/gs.asp>.

(iii) *Locality Pay.* To determine adjustments for locality pay DHS uses the latest locality pay areas (including the "Rest of U.S." area) established by OPM. The rates used in the initial Table can be found at <http://www.opm.gov/oca/03tables/locdef.asp>.

(3) *Review and update.* DHS will review and update the Table periodically, at least annually. The comments of Sponsoring and Participating Agencies and their experience with the Table will be considered and evaluated in the course of the reviews.

(4) *Initial rates and subsequent revisions.* DHS will publish the initial maximum pay rate table in the **Federal Register** as a notice with request for comments. Subsequent revisions will be made to the pay rate table as OPM changes salary rates as described in this section. When subsequent revisions are made to the maximum pay rate table DHS will publish the new maximum pay rate table in the **Federal Register**. The rates will be effective for the latest year indicated by OPM.¹

(d) *Application of the maximum pay rate table—(1) Applicability.* The Maximum Pay Rate Table sets forth maximum rates for which DHS will reimburse the Sponsoring Agency for compensation paid to Activated Affiliated Personnel and as Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency.

(2) *Higher rates.* The Sponsoring Agency may choose to pay Affiliated Personnel at a higher rate, but DHS will not reimburse the increment above the maximum rate specified in the Maximum Pay Rate Table. Likewise, the Sponsoring Agency may choose to enter into a Participating Agency agreement with the individual's employer, rather than use the individual as an Affiliated Personnel, in which case the Maximum Pay Rate Table would not apply.

(3) *Compensation for Sponsoring Agency employees serving as Affiliated Personnel.* An employee of a Sponsoring Agency serving on a Task Force in a capacity other than his or her normal job, e.g., a fire department dispatcher affiliated with the Task Force as a canine search specialist, as an Affiliated Personnel, would not necessarily be subject to the Maximum Pay Rate Table for reimbursement for salary and benefits for that individual. However, Sponsoring Agencies may use the rates in the Maximum Pay Rate Table as a guide for establishing compensation levels for such individuals.

(4) *Backfill expenses for Affiliated Personnel under § 208.39(g).* (i) The only way that DHS can reimburse for Backfill costs incurred for Affiliated Personnel is through Participating

¹ In some years the latest year may not be the current calendar year. For instance, OPM did not change its pay rates for calendar year 2004, and the 2003 schedules apply.

Agencies. If reimbursement for Backfill expenses is needed for Affiliated Personnel, DHS encourages them to urge their employers or professional association to seek Participating Agency status.

(ii) *Private, for-profit organizations.* Participating Agency status is available to private, for-profit organizations, e.g., HMOs or medical or engineering professional associations, under the revised definition of "Participating Agency" set forth in this Interim rule. (See Definitions, § 208.2, *Participating Agency*, and § 208.32, *Maximum Pay Rate Table*). When a for-profit Participating Agency must backfill an Activated System Member's position we will compensate that Participating Agency up to the maximum rate provided in the Table.

(iii) *Compensation costs.* DHS will reimburse for-profit organizations, for purposes of reimbursement and Backfill, for the System Member's actual compensation or the actual compensation of the individual who Backfills a position (which includes salary and benefits, as described in §§ 208.39 and 208.40), but will not reimburse for billable or other rates that might be charged for services rendered to commercial clients or patients.

§§ 208.13—208.20 [Reserved]

Subpart B—Preparedness Cooperative Agreements

§ 208.21 Purpose.

Subpart B of this part provides guidance on the administration of Preparedness Cooperative Agreements.

§ 208.22 Preparedness Cooperative Agreement process.

(a) *Application.* To obtain DHS funding for an award or amendment of a Preparedness Cooperative Agreement, the Sponsoring Agency must submit an application. Standard form SF-424 "Application for Federal Assistance" generally will be used. However, the application must be in a form that the Assistance Officer specifies.

(b) *Award.* DHS will award a Preparedness Cooperative Agreement to each Sponsoring Agency to provide Federal funding to develop and maintain System resource capabilities and operational readiness. For the purposes of the Preparedness Cooperative Agreement, the Sponsoring Agency will be considered the "recipient."

(c) *Amendment—(1) Procedure.* Absent special circumstances, DHS will fund and amend Preparedness Cooperative Agreements on an annual basis. Before amendment, the Assistance

Officer will issue a call for Cooperative Agreement amendment applications.

The Assistance Officer will specify required application forms and supporting documentation to be submitted with the application.

(2) *Period of performance.* Absent special circumstances, the period of performance for Preparedness Cooperative Agreements will be 1 year from the date of award. The Assistance Officer may allow for an alternate period of performance with the approval of the Director.

(3) *Assistance Officer.* The Assistance Officer is the only individual authorized to award or modify a Preparedness Cooperative Agreement.

(d) *Award amounts.* The Director will determine award amounts on an annual basis. A Task Force is eligible for an annual award only if the Program Manager receives and approves the Task Force's current-year Daily Cost Estimate.

(e) *DHS priorities.* The Director will establish overall priorities for the use of Preparedness Cooperative Agreement funds taking into consideration the results of readiness evaluations and actual Activations, overall priorities of DHS, and other factors, as appropriate.

(f) *Cost sharing.* The Director may subject Preparedness Cooperative Agreement awards to cost sharing provisions. In the call for Preparedness Cooperative Agreement amendment applications, the Assistance Officer must inform Sponsoring Agencies about any cost sharing obligations.

(g) *Sponsoring Agency priorities.* The Sponsoring Agency should indicate its spending priorities in the application. The Program Manager will review these priorities and will make recommendations to the Assistance Officer for negotiating the final agreement.

(h) *Responsibility to maintain integrity of the equipment cache.* The Sponsoring Agency is responsible to maintain the integrity of the equipment cache, including but not limited to, maintenance of the cache, replacement of equipment or supplies expended in training, activations, or local use of the cache, and timely availability of the cache for Task Force Activations.

§ 208.23 Allowable costs under Preparedness Cooperative Agreements.

System Members may spend Federal funds that DHS provides under any Preparedness Cooperative Agreement and any required matching funds under 44 CFR 13.22 and this section to pay reasonable, allowable, necessary and allocable costs that directly support System activities, including the following:

(a) Administration, including:

(1) Management and administration of day-to-day System activities such as personnel compensation and benefits relating to System maintenance and development, record keeping, inventory of equipment, and correspondence;

(2) Travel to and from System activities, meetings, conferences, training, drills and exercises;

(3) Tests and examinations, including vaccinations, immunizations and other tests that are not normally required or provided in the course of a System Member's employment, and that DHS requires to meet its standards.

(b) Training:

(1) Development and delivery of, and participation in, System-related training courses, exercises, and drills;

(2) Construction, maintenance, lease or purchase of System-related training facilities or materials;

(3) Personnel compensation expenses, including overtime and other related expenses associated with System-related training, exercises, or drills;

(4) System-required evaluations and certifications other than the certifications that DHS requires System Members to possess at the time of entry into the System. For instance, DHS will not pay for a medical school degree, paramedic certification or recertification, civil engineering license, etc.

(c) Equipment:

(1) Procurement of equipment and supplies specifically identified on the then-current DHS-approved Equipment Cache List;

(2) Maintenance and repair of equipment included on the current Equipment Cache List;

(3) Maintenance and repair of equipment acquired with DHS approval through the Federal Excess Property program, except as provided in § 208.25 of this part;

(4) Purchase, construction, maintenance or lease of storage facilities and associated equipment for System equipment and supplies.

(d) Disaster search canine expenses limited to:

(1) Procurement for use as a System resource;

(2) Training and certification expenses;

(3) Veterinary care.

(e) Management and administrative costs, actually incurred but not otherwise specified in this section that directly support the Sponsoring Agency's US&R capability, provided that such costs do not exceed 7.5 percent of the award/amendment amount.

§ 208.24 Purchase and maintenance of items not listed on Equipment Cache List.

(a) Requests for purchase or maintenance of equipment and supplies not appearing on the Equipment Cache List, or that exceed the number specified in the Equipment Cache List, must be made in writing to the Program Manager. No Federal funds provided under any Preparedness Cooperative Agreement may be expended to purchase or maintain any equipment or supply item unless:

(1) The equipment and supplies directly support the Sponsoring Agency's US&R capability;

(2) The Program Manager approves the expenditure and gives written notice of his or her approval to the Sponsoring Agency before the Sponsoring Agency purchases the equipment or supply item.

(b) Maintenance of items approved for purchase under this section is eligible for reimbursement, except as provided in § 208.26 of this subpart.

§ 208.25 Obsolete equipment.

(a) The Director will periodically identify obsolete items on the Equipment Cache List and provide such information to Sponsoring Agencies.

(b) Neither funds that DHS provides nor matching funds required under a Preparedness Cooperative Agreement may be used to maintain or repair items that DHS has identified as obsolete.

§ 208.26 Accountability for use of funds.

The Sponsoring Agency is accountable for the use of funds as provided under the Preparedness Cooperative Agreement, including financial reporting and retention and access requirements according to 44 CFR 13.41 and 13.42.

§ 208.27 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Preparedness Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 44 CFR 13.32(g), for example, when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

§§ 208.28–208.30 [Reserved]**Subpart C—Response Cooperative Agreements****§ 208.31 Purpose.**

Subpart C of this part provides guidance on the administration of Response Cooperative Agreements.

§ 208.32 Definitions of terms used in this subpart.

Affiliated Personnel means individuals not normally employed by a Sponsoring Agency or Participating Agency and individuals normally affiliated with a Sponsoring Agency or Participating Agency as volunteers.

Demobilization Order means a DHS communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

Exempt means any System Member who is exempt from the requirements of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, pertaining to overtime compensation and other labor standards.

Maximum Pay Rate Table means the DHS-issued table that identifies the maximum pay rates for selected System positions that may be used for reimbursement of Affiliated Personnel compensation and Backfill for Activated System Members employed by or otherwise associated with a for-profit Participating Agency. The Maximum Pay Rate Table does not apply to a System member whom a Sponsoring Agency or Participating Agency employs.

Mobilization means the process of assembling equipment and personnel in response to an Alert or Activation.

Non-Exempt means any System Member who is covered by 29 U.S.C. 201 *et seq.*

Rehabilitation means the process of returning personnel and equipment to a pre-incident state of readiness after DHS terminates an Activation.

§ 208.33 Allowable costs.

(a) *Cost neutrality.* DHS policy is that an Alert or Activation should be as cost neutral as possible to Sponsoring Agencies and Participating Agencies. To make an Alert or Activation cost-neutral, DHS will reimburse under this subpart all reasonable, allowable, necessary and allocable costs that a Sponsoring Agency or Participating Agency incurs during the Alert or Activation.

(b) *Actual costs.* Notwithstanding any other provision of this chapter, DHS will not reimburse a Sponsoring Agency or Participating Agency for any costs greater than those that the Sponsoring Agency or Participating Agency actually incurs during an Alert, Activation.

(c) *Normal or predetermined practices.* Consistent with Office of Management and Budget (OMB) Circulars A–21, A–87, A–102 and A–110 (2 CFR part 215), as applicable, Sponsoring Agencies and Participating Agencies must adhere to their own normal and predetermined practices

and policies of general application when requesting reimbursement from DHS except as it sets out in this subpart.

(d) *Indirect costs.* Indirect costs beyond the administrative and management costs allowance established by § 208.41 of this part are not allowable.

§ 208.34 Agreements between Sponsoring Agencies and others.

Sponsoring Agencies are responsible for executing such agreements with Participating Agencies and Affiliated Personnel as may be necessary to implement the Sponsoring Agency's Response Cooperative Agreement with DHS. Those agreements must identify established hourly or daily rates of pay for System Members. The hourly or daily rates of pay for Affiliated Personnel must be in accordance with, and must not exceed, the maximum pay rates contained in the then-current Maximum Pay Rate Table.

§ 208.35 Reimbursement for Advisory.

DHS will not reimburse costs incurred during an Advisory.

§ 208.36 Reimbursement for Alert.

(a) *Allowable costs.* DHS will reimburse costs incurred during an Alert, up to the dollar limit specified in the Alert Order, for the following activities:

(1) Personnel costs, including Backfill, incurred to prepare for Activation.

(2) Transportation costs relating to hiring, leasing, or renting vehicles and drivers.

(3) The administrative allowance provided in § 208.41 of this part.

(4) Food and beverages for Task Force Members and Support Specialists when DHS does not provide meals during the Alert. DHS will limit food and beverage reimbursement to the amount of the then-current Federal meals daily allowance published in the **Federal Register** for the locality where such food and beverages were provided, multiplied by the number of personnel who received them.

(b) *Calculation of Alert Order dollar limit.* The Alert Order dollar limit will equal:

(1) An allowance of 10 percent of the Task Force's Daily Cost Estimate; and

(2) A supplemental allowance of 1 percent of the Task Force's Daily Cost Estimate for each 24-hour period beyond the first 72 hours of Alert.

(c) *Non-allowable costs.* DHS will not reimburse costs incurred or relating to the leasing, hiring or chartering of aircraft or the purchase of any equipment, aircraft, or vehicles.

§ 208.37 Reimbursement for equipment and supply costs incurred during Activation.

(a) *Allowable costs.* DHS will reimburse costs incurred for the emergency procurement of equipment and supplies in the number, type, and up to the cost specified in the current approved Equipment Cache List, and up to the aggregate dollar limit specified in the Activation Order. The Director may determine emergency procurement dollar limits, taking into account previous Activation history, available funding, the extent and nature of the incident, and the current state of Task Force readiness.

(b) *Non-Allowable costs.* DHS will not reimburse costs incurred for items that are not listed on the Equipment Cache List; for items purchased greater than the cost or quantity identified in the Equipment Cache List; or for any purchase of non-expendable items that duplicate a previous purchase under a Preparedness or Response Cooperative Agreement.

§ 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.

With the exception of emergency procurement authorized in the Activation Order, and replacement of consumable items provided for in § 208.43(a)(2) of this subpart, DHS will not reimburse costs incurred for re-supply and logistical support during Activation. Re-supply and logistical support of Task Forces needed during

Activation are the responsibility of the Joint Management Team.

§ 208.39 Reimbursement for personnel costs incurred during Activation.

(a) *Compensation.* DHS will reimburse the Sponsoring Agency for costs incurred for the compensation of each Activated System Member during Activation. Reimbursement of compensation costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. The provisions of § 208.40 of this part govern costs incurred for providing fringe benefits to System Members.

(b) *Public Safety Exemption not applicable.* DHS will reimburse Sponsoring Agencies for costs incurred by Non-Exempt System Members in accordance with 29 U.S.C. 207(a) of the Fair Labor Standards Act, without regard to the public safety exemption contained in 29 U.S.C. 207(k). In other words, DHS will reimburse Sponsoring Agencies on an overtime basis for any hours worked by Non-Exempt System Members greater than 40 hours during a regular workweek.

(c) *Tour of duty.* The tour of duty for all Activated System Members will be 24 hours. DHS will reimburse the Sponsoring Agency for salary and overtime costs incurred in

compensating System Members for meal periods and regularly scheduled sleep periods during Activation. Activated System Members are considered "on-duty" and must be available for immediate response at all times during Activation.

(d) *Regular rate.* The regular rate for purposes of calculating allowable salary and overtime costs is the amount determined in accordance with § 208.39(e)(1) through (3) of this subpart.

(e) *Procedures for calculating compensation during Activation.* A Sponsoring Agency or Participating Agency must:

- (1) Convert the base hourly wage of any Non-Exempt System Member regularly paid under 29 U.S.C. 207(k) to its equivalent for a 40-hour work week;
- (2) Convert the annual salary of any salaried Non-Exempt System Member to its hourly equivalent for a 40-hour workweek;
- (3) Calculate the daily compensation of Exempt System Members based on their current annual salary, exclusive of fringe benefits;
- (4) Calculate the total number of hours worked by each System Member to be included in the Sponsoring Agency's request for reimbursement; and
- (5) Submit a request for reimbursement under § 208.52 of this part according to the following table:

If the Sponsoring Agency or Participating Agency * * *	And the Sponsoring Agency or Participating Agency * * *	Then the following compensation costs are allowable:
(i) Customarily and usually compensates Exempt System Members by paying a salary, but not overtime,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Exempt System members.	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation.
(ii) Customarily and usually compensates Exempt System Members by paying a salary but not overtime	Customarily and usually awards compensatory time or other overtime substitute for Exempt System Members for hours worked above a predetermined hours threshold (for example, the Sponsoring Agency customarily and usually grants compensatory time for all hours worked above 60 in a given week).	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the dollar value at the time of accrual of the compensatory time or other overtime substitute for each Activated Exempt System Member based on the duration of the Activation.
(iii) Customarily and usually compensates Exempt System Members by paying a salary and overtime,	Customarily and usually calculates overtime for Exempt System Members by paying a predetermined overtime payment for each hour worked above a predetermined hours threshold.	The daily compensation equivalent calculated under § 208.39(e)(3) of this part for each Activated Exempt System Member for each full or partial day during Activation AND the predetermined overtime payment for each hour during the Activation above the previously determined hours threshold for each Activated Exempt System Member.
(iv) Customarily and usually compensates Non-Exempt System Members by paying overtime after 40 hours per week,	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System members.	For each seven-day period during the Activation, the hourly wage of each Activated Non-Exempt System Member for the first 40 hours AND the overtime payment for each Activated Non-Exempt System Member for every hour over 40.

If the Sponsoring Agency or Participating Agency * * *	And the Sponsoring Agency or Participating Agency * * *	Then the following compensation costs are allowable:
(v) Customarily and usually compensates Non-Exempt System Members according to a compensation plan established under 29 U.S.C. 207(k),	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System Members.,	For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member calculated under §208.39(e)(1) of this part for the first 40 hours AND the overtime payment equivalent for each Activated Non-Exempt System Member calculated under §208.39(e)(1) of this part for every hour over 40.
(vi) Activates Personnel, who are customarily and usually paid an hourly wage according to the Maximum Pay Rate Table,	For each seven-day period during the Affiliated Activation, the hourly wage for each Activated Affiliated Personnel for the first 40 hours and one and one-half times the hourly wage for each Activated Affiliated Personnel for every hour over 40.
(vii) Activates Affiliated Personnel who are customarily and usually paid a daily compensation rate according to the Maximum Pay Rate Table,	The daily compensation rate for each Activated Affiliated Personnel for each full or partial day during the Activation.

(f) *Reimbursement of additional salary and overtime costs.* DHS will reimburse any identified additional salary and overtime cost incurred by a Sponsoring Agency as a result of the temporary conversion of a Non-Exempt System Member normally compensated under 29 U.S.C. 207(k) to a 40-hour work week under 29 U.S.C. 207(a).

(g) *Reimbursement for Backfill costs upon Activation.* DHS will reimburse the cost to Backfill System Members. Backfill costs consist of the expenses generated by filling the position in

which the Activated System Member should have been working. These costs are calculated by subtracting the non-overtime compensation, including fringe benefits, of Activated System Members from the total costs (non-overtime and overtime compensation, including fringe benefits) paid to Backfill the Activated System Members. Backfill reimbursement is available only for those positions that are normally Backfilled by the Sponsoring Agency or Participating Agency during Activation.

Employees exempt under the Fair Labor Standards Act (FLSA) not normally Backfilled by the Sponsoring Agency or Participating Agency are not eligible for Backfill during Activation.

§ 208.40 Reimbursement of fringe benefit costs during Activation.

(a) Except as specified in §208.40 (c) of this subpart, DHS will reimburse the Sponsoring Agency for fringe benefit costs incurred during Activation according to the following table:

If the Sponsoring Agency or Participating Agency * * *	Then the Sponsoring Agency or Participating Agency must * * *	Example
(1) Incurs a fringe benefit cost based on the number of base hours worked by a System Member,	Bill DHS for a pro-rata share of the premium based on the number of base hours worked during Activation.	The City Fire Department incurs a premium of 3 percent for dental coverage based on the number of base hours worked in a week (53 hours). The City should bill DHS an additional 3 percent of the firefighter's converted compensation for the first 40 hours Activation.
(2) Incurs a fringe benefit cost based on the number of hours a System Member actually worked (base hours and overtime),	Bill DHS for a pro-rata share of the premium based on the number of hours each System Member worked during Activation.	The City Fire Department pays a premium of 12 percent for retirement based on the number of hours worked by a firefighter. The City should bill DHS an additional 12 percent of the firefighter's total compensation during Activation.
(3) Incurs a fringe benefit cost on a yearly basis based on the number of people employed full-time during the year,	Bill DHS for a pro-rata share of those fringe benefit costs based on the number of non-overtime hours worked during Activation by System Members employed full time.	The City Fire Department pays workers compensation premiums into the City risk fund for the following year, based on the number of full-time firefighters employed during the current year. The City should bill DHS for workers compensation premium costs by multiplying the hourly fringe benefit rate or amount by the number of non-overtime hours worked during Activation by full time firefighters who are System Members.

(b) *Differential pay.* DHS will reimburse the Sponsoring Agency for direct costs incurred because of any separate differential compensation paid for work performed during an

Activation including, but not limited to, differentials paid for holidays, night work, hazardous duty, or other paid fringe benefits, provided such differentials are not otherwise

reimbursed under paragraph (a) of this section. A detailed explanation of the differential payment for which the Sponsoring Agency seeks reimbursement must accompany any

request for reimbursement under this section together with identification of every fringe benefit sought under § 208.40(a) of this part and the method used to calculate each such payment and the reimbursement sought from DHS.

(c) DHS will not reimburse the Sponsoring Agency for fringe benefit costs for Affiliated Personnel.

§ 208.41 Administrative allowance.

(a) The administrative allowance is intended to defray costs of the following activities, to the extent provided in paragraph (b) of this section:

- (1) Collecting expenditure information from Sponsoring Agencies and Participating Agencies;
- (2) Compiling and summarizing cost records and reimbursement claims;
- (3) Duplicating cost records and reimbursement claims; and
- (4) Submitting reimbursement claims, including mailing, transmittal, and related costs.

(b) The administrative allowance will be equal to the following:

- (1) If total allowable costs are less than \$100,000, 3 percent of total allowable costs included in the reimbursement claim;
- (2) If total allowable costs are \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of costs included in the reimbursement claim greater than \$100,000;
- (3) If total allowable costs are \$1,000,000 or more, \$21,000 plus 1 percent of costs included in the reimbursement claim greater than \$1,000,000.

§ 208.42 Reimbursement for other administrative costs.

Costs incurred for conducting after-action meetings and preparing after-action reports must be billed as direct costs in accordance with DHS administrative policy.

§ 208.43 Rehabilitation.

DHS will reimburse costs incurred to return System equipment and personnel to a state of readiness following Activation as provided in this section.

(a) *Costs for Equipment Cache List items*—(1) *Non-consumable items*. DHS will reimburse costs incurred to repair or replace any non-consumable item on the Equipment Cache List that was lost, damaged, destroyed, or donated at DHS direction to another entity, during Activation. For each such item, the Sponsoring Agency must document, in writing, the circumstances of the loss, damage, destruction, or donation.

(2) *Consumable items*. DHS will reimburse costs incurred to replace any

consumable item on the Equipment Cache List that was consumed during Activation.

(3) *Personnel costs associated with equipment cache rehabilitation*. DHS will reimburse costs incurred for the compensation, including benefits, payable for actual time worked by each person engaged in rehabilitating the equipment cache following Activation, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this part, up to the number of hours specified in the Demobilization Order. Fringe benefits are reimbursed under the provisions of § 208.40 of this part.

(b) *Costs for personnel rehabilitation*. DHS will reimburse costs incurred for the compensation, including benefits and Backfill, of each Activated System Member regularly scheduled to work during the rehabilitation period specified in the Demobilization Order, in accordance with the standard pay policy of the Sponsoring Agency or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this part.

(c) *Other allowable costs*—(1) *Local transportation*. DHS will reimburse costs incurred for transporting Task Force Members from the point of assembly to the point of departure and from the point of return to the location where they are released from duty. DHS will also reimburse transportation costs incurred for assembling and moving the equipment cache from its usual place(s) of storage to the point of departure, and from the point of return to its usual place(s) of storage. Such reimbursement will include costs to return the means of transportation to its point of origin.

(2) *Ground transportation*. When DHS orders a Sponsoring Agency to move its Task Force Members and equipment cache by ground transportation, DHS will reimburse costs incurred for such transportation, including but not limited to charges for contract carriers, rented vehicles, contract vehicle operators, fleet vehicles, fuel and associated transportation expenses. The Director has authority to issue schedules of maximum hourly or per mile reimbursement rates for fleet and contract vehicles.

(3) *Food and beverages*. DHS will reimburse expenditures for food and beverages for Activated Task Force Members and Support Specialists when the Federal government does not provide meals during Activation. Reimbursement of food and beverage costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the

Activation or traveling to or from locations at which they were actively supporting the Activation. Food and beverage reimbursement will be limited to the amount of the then-current Federal meals and incidental expenses daily allowance published in the **Federal Register** for the locality where such food and beverages were provided, multiplied by the number of personnel who received the same.

§ 208.44 Reimbursement for other costs.

(a) Except as allowed under paragraph (b) of this section, DHS will not reimburse other costs incurred preceding, during or upon the conclusion of an Activation unless, before making the expenditure, the Sponsoring Agency has requested, in writing, permission for a specific expenditure and has received written permission from the Program Manager or his or her designee to make such expenditure.

(b) At the discretion of the Program Manager or his or her designee, a request for approval of costs presented after the costs were incurred must be in writing and establish that:

- (1) The expenditure was essential to the Activation and was reasonable;
- (2) Advance written approval by the Program Manager was not feasible; and
- (3) Advance verbal approval by the Program Manager had been requested and was given.

§ 208.45 Advance of funds.

At the time of Activation of a Task Force, the Task Force will develop the documentation necessary to request an advance of funds be paid to such Task Force's Sponsoring Agency. Upon approval, DHS will submit the documentation to the Assistance Officer and will request an advance of funds up to 75 percent of the estimated personnel costs for the Activation. The estimated personnel costs will include the salaries, benefits, and Backfill costs for Task Force Members and an estimate of the salaries, benefits and Backfill costs required for equipment cache rehabilitation. The advance of funds will not include any costs for equipment purchase.

§ 208.46 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Response Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 44 CFR 13.32(g), when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its

obligations under the Memorandum of Agreement.

§§ 208.47–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

§ 208.51 General.

(a) *Purpose.* This subpart identifies the procedures that Sponsoring Agencies must use to request reimbursement from DHS for costs incurred under Response Cooperative Agreements.

(b) *Policy.* It is DHS policy to reimburse Sponsoring Agencies as expeditiously as possible consistent with Federal laws and regulations.

§ 208.52 Reimbursement procedures.

(a) *General.* A Sponsoring Agency must present a claim for reimbursement to DHS in such manner as the Director specifies.

(b) *Time for submission.* (1) Claims for reimbursement must be submitted within 90 days after the end of the Personnel Rehabilitation Period specified in the Demobilization Order.

(2) The Director may extend and specify the time limitation in paragraph (b)(1) of this section when the Sponsoring Agency justifies and requests the extension in writing.

§§ 208.53–208.59 [Reserved]

§ 208.60 Determination of claims.

When DHS receives a reviewable claim for reimbursement, DHS will review the claim to determine whether and to what extent reimbursement is allowable. Except as provided in § 208.63 of this part, DHS will complete its review and give written notice to the Sponsoring Agency of its determination within 90 days after the date DHS receives the claim. If DHS determines that any item of cost is not eligible for reimbursement, its notice of determination will specify the grounds on which DHS disallowed reimbursement.

§ 208.61 Payment of claims.

DHS will reimburse all allowable costs for which a Sponsoring Agency requests reimbursement within 30 days after DHS determines that reimbursement is allowable, in whole or in part, at any stage of the reimbursement and appeal processes identified in this subpart.

§ 208.62 Appeals.

(a) *Initial appeal.* The Sponsoring Agency may appeal to the Program

Manager any determination made under § 208.60 of this part to disallow reimbursement of an item of cost:

(1) The appeal must be in writing and submitted within 60 days after receipt of DHS's written notice of disallowance under § 208.60 of this part.

(2) The appeal must contain legal and factual justification for the Sponsoring Agency's contention that the cost is allowable.

(3) Within 90 days after DHS receives an appeal, the Program Manager will review the information submitted, make such additional investigations as necessary, make a determination on the appeal, and submit written notice of the determination of the appeal to the Sponsoring Agency.

(b) *Final appeal.* (1) If the Program Manager denies the initial appeal, in whole or in part, the Sponsoring Agency may submit a final appeal to the Deputy Director. The appeal must be made in writing and must be submitted not later than 60 days after receipt of written notice of DHS's determination of the initial appeal.

(2) Within 90 days following the receipt of a final appeal, the Deputy Director will render a determination and notify the Sponsoring Agency, in writing, of the final disposition of the appeal.

(c) *Failure to file timely appeal.* If the Sponsoring Agency does not file an appeal within the time periods specified in this section, DHS will deem that the Sponsoring Agency has waived its right to appeal any decision that could have been the subject of an appeal.

§ 208.63 Request by DHS for supplemental information.

(a) At any stage of the reimbursement and appeal processes identified in this subpart, DHS may request the Sponsoring Agency to provide supplemental information that DHS considers necessary to determine either a claim for reimbursement or an appeal. The Sponsoring Agency must exercise its best efforts to provide the supplemental information and must submit to DHS a written response that includes such supplemental information as the Sponsoring Agency is able to provide within 30 days after receiving DHS's request.

(b) If DHS makes a request for supplemental information at any stage of the reimbursement and appeal processes, the applicable time within which its determination of the claim or appeal is to be made will be extended by 30 days. However, without the

consent of the Sponsoring Agency, no more than one such time extension will be allowed for any stage of the reimbursement and appeal processes.

§ 208.64 Administrative and audit requirements.

(a) *Non-Federal audit.* For Sponsoring Agencies and States, requirements for non-Federal audit are contained in 44 CFR 13.26, in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

(b) *Federal audit.* DHS or the General Accounting Office may elect to conduct a Federal audit of any payment made to a Sponsoring Agency or State.

§ 208.65 Mode of transmission.

When sending all submissions, determinations, and requests for supplemental information under this subpart, all parties must use a means of delivery that permits both the sender and addressee to verify the dates of delivery.

§ 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.

(a) Upon written request by the Sponsoring Agency DHS will reopen the time period for submission of a request for reimbursement after the Sponsoring Agency has submitted its request for reimbursement, if:

(1) The salary or wage rate applicable to the period of an Activation is retroactively changed due to the execution of a collective bargaining agreement, or due to the adoption of a generally applicable State or local law, ordinance or wage order or a cost-of-living adjustment;

(2) The Sponsoring Agency or any Participating Agency incurs an additional cost because of a legally-binding determination; or

(3) The Deputy Director determines that other extenuating circumstances existed that prevented the Sponsoring Agency from including the adjustment of costs in its original submission.

(c) The Sponsoring Agency must notify DHS as early as practicable that it anticipates such a request.

§§ 208.67–208.70 [Reserved]

Dated: February 3, 2005.

Michael D. Brown,
Under Secretary, Emergency Preparedness
and Response, Department of Homeland
Security.

[FR Doc. 05-3192 Filed 2-23-05; 8:45 am]

BILLING CODE 9110-69-P



STATE OF NEW JERSEY OFFICE OF
EMERGENCY MANAGEMENT
NEW JERSEY TASK FORCE ONE
URBAN SEARCH AND RESCUE
Joint Base McGuire-Dix-Lakehurst
Building #118, County Route #547
Lakehurst, New Jersey 08733
Office (732) 657-7001 Fax (732) 657-7015

PARTICIPATING AGENCY

APPENDIX E – COMPENSATION

DATE –

PARTICIPATING AGENCY NAME –
MAILING ADDRESS –

PHONE NUMBER –
CONTACT PERSON -

TASK FORCE MEMBERS NAME	
HOURLY PAY RATE	
OVERTIME PAY RATE	

TASK FORCE MEMBERS NAME	
HOURLY PAY RATE	
OVERTIME PAY RATE	

TASK FORCE MEMBERS NAME	
HOURLY PAY RATE	
OVERTIME PAY RATE	

TASK FORCE MEMBERS NAME	
HOURLY PAY RATE	
OVERTIME PAY RATE	



STATE OF NEW JERSEY OFFICE OF
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PARTICIPATING AGENCY

APPENDIX C – POINT OF CONTACT

DATE - 8/27/16

PARTICIPATING AGENCY NAME – Hoboken Fire Department

CONTACT PERSON – Chief Anton Peskens

STREET ADDRESS – 201 Jefferson St,
CITY, STATE, ZIP CODE - Hoboken, NJ 07030

OFFICE PHONE NUMBER - 201-420-2259
24 HOUR PHONE NUMBER – 201-420-2007

CONTACT E-MAIL ADDRESS - apeskens@hobokenfire.org

MEMO

To: Councilmembers

From: Corporation Counsel

Re: Memorandum of Agreement between New Jersey Office of Emergency Management (as the “Sponsoring Agency”) and the Hoboken Fire Department (as the “Participating Agency”)

See Also: <http://www.ready.nj.gov/taskforce1/index.html>

Please be advised that the Fire Department has requested that Corporation Counsel prepare a Resolution for the September 7, 2016 Council Meeting to approve a Memorandum of Agreement (the “Agreement”) between the New Jersey Office of Emergency Management (“NJOEM”) and the Hoboken Fire Department (“HFD”). We have prepared this memo in order to highlight relevant portions of the agreement to aid in your consideration of the accompanying resolution.

- **PURPOSE OF AGREEMENT:** The purpose of this Agreement is to allow certain members of the HFD, specifically, Captain Christopher McGlinchy, Captain Richard Marsh, and Captain Matthew Markey, to participate in the New Jersey Task Force One (“NJTF-1”). NJTF-1 is a multi-disciplined Urban Search and Rescue Task Force authorized and sponsored by the NJOEM. The NJTF-1 is responsible for search, rescue, and recovery operations in response to, or in anticipation of, a major disaster or emergency under the Stafford Act.
- **REQUIREMENTS OF PARTICIPANTS:** Participants must attend required trainings and be able to mobilize within 2 hours and be able to respond on a mission for up to 14 days. Participants must remain employees in good standing of the Participating Agency and are subject to health and fitness requirements.
- **FINANCIAL:** The HFD will receive reimbursement for response expenses that are authorized by FEMA to be incurred by or for the benefit of participants engaged in System Task Force activities, upon receiving reimbursement for such expenses from the federal government. After the participating member returns from duty, the HFD must then prepare a “cost reimbursement package” including salary costs, fringe benefit costs, and if eligible, backfill costs, for submission by the NJOEM to FEMA as part of an overall claim package. However, reimbursement of these costs is subject to the availability and receipt of funds from FEMA to the NJOEM.
- **LEGAL PROTECTION:** While participating in an emergency response or other sanctioned preparedness activity, participants are given the status of “temporary excepted federal volunteer” which secures protection for them under the Federal Employees Compensation Act and Federal Tort Claims Act.

- **TERMINATION OF AGREEMENT:** This agreement may be terminated by either party on 30 days written notice, except that the HFD cannot terminate the agreement without the consent of NJOEM during any time period when the Task Force has been placed on Alert status or has been Activated, if the Alert or Activation affects participants from the HFD.

- **PARTICIPANTS:** This agreement relates to the specific individuals from the HFD as listed in Appendix D.

MEMORANDUM OF AGREEMENT

BETWEEN

NEW JERSEY OFFICE OF EMERGENCY MANAGEMENT

AS THE SPONSORING AGENCY

OF NEW JERSEY TASK FORCE ONE

AND

[_____]

AS A PARTICIPATING AGENCY OF THE TASK FORCE

WHEREAS, the New Jersey Office of Emergency Management (NJOEM) is the lead agency in New Jersey responsible for coordinating the State's preparedness, response and recovery operations for all hazards impacting the State; and

WHEREAS, New Jersey Task Force One (NJ-TF1) is a multi-disciplined Urban Search and Rescue (US&R) Task Force authorized and sponsored by NJOEM, responsible for search, rescue, and recovery operations; and

WHEREAS, the U.S. Department of Homeland Security, acting through the Federal Emergency Management Agency (FEMA), is responsible for developing and administering the National Urban Search and Rescue Response System (the System); and

WHEREAS, the System is authorized by federal law, principally the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 through 5206 (the Stafford Act), and the applicable provisions of the Code of Federal Regulations, including 44 CFR 208.1, et seq.; and

WHEREAS, the purpose of the System is to develop and provide a national system of standardized urban search and rescue resources to respond to emergencies and major disasters that are beyond the capabilities of affected states and local governments; and

WHEREAS, the National Urban Search and Rescue Response System includes 28 Task Forces across the country; and

WHEREAS, NJ-TF1, through its Sponsoring Agency, NJOEM, is a participating Task Force in the System; and

WHEREAS, in the performance of its responsibilities, NJOEM as the Sponsoring Agency of NJ-TF1 is charged with, among other things, recruiting and organizing members of the Task Force, and

WHEREAS, NJOEM as a Sponsoring Agency, may enter into written cooperative agreements with entities designated as Participating Agencies in the Task Force; and

WHEREAS, this Agreement is intended to set forth the roles and responsibilities of NJOEM/NJ-TF1, the Participating Agency, and the Participating Task Force Member in engaging in preparatory and response activities in support of the National Urban Search and Rescue Response System; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, and intending to be bound thereby, the parties agree as follows:

1. Definitions.

Activated or Activation means the status of a System resource placed at the direction, control and funding of DHS in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

Activation Order means the DHS communication placing a System resource under the direction, control, and funding of DHS.

Affiliated Personnel means an individual not otherwise associated with the Sponsoring Agency or a Participating Agency who is a member of the System and/or State Task Forces.

Alert means the status of a System resource's readiness when triggered by an Alert Order indicating that DHS may activate the System resource.

Alert Order means the DHS communication that places a System resource on Alert status.

DHS means the U.S. Department of Homeland Security.

FEMA means the Federal Emergency Management Agency, an operational component of DHS.

FEMA-Sanctioned Training or Exercise means a training session or exercise sponsored by an organization other than FEMA, which has received FEMA approval.

NJ-TF1 means New Jersey Task Force One.

NJOEM means the New Jersey Office of Emergency Management.

Participating Agency means a state or local government, non-profit organization, or private organization that has executed an agreement with a Sponsoring Agency to participate in the National Urban Search and Rescue Response System.

Participant means the employee of a Participating Agency who is a member of the System and/or State Task Forces.

Personnel Rehabilitation Period means the period allowed by DHS for a person's rehabilitation to normal conditions of living following Activation.

Program Manager means the person responsible for the administrative and technical work related to administration of the NJ-TF1.

Sponsoring Agency means a state or local government that has executed a Memorandum of Agreement with the U.S. Department of Homeland Security, acting through the Federal Emergency Management Agency, to participate in the National Urban Search and Rescue Response System as a Task Force. NJOEM/NJ-TF1 has executed such an Agreement, a copy of which is attached hereto as Appendix A and incorporated by reference.

State Task Force means NJ-TF1 missions requested and authorized through NJOEM and/or the New Jersey State Police to respond to incidents outside the scope of the National Urban Search and Rescue Response System. NJ-TF1 missions not authorized through the System are volunteer missions not subject to the System's reimbursement allowances as described herein.

~~System means the National Urban Search and Rescue Response System.~~

System Task Force or Task Force means the team of individuals occupying certain specified positions plus additional support personnel, all of whom have been properly trained with the requisite skills and capabilities required for urban search and rescue operations and/or deployment through the System. A System Task Force may be deployed as a single unit or it may be reorganized into teams for purposes of modularized responses for limited or specialized Activations. Members of a System Task Force may also be deployed as members of a management or other technical team under the direction of DHS or FEMA.

Temporary Excepted Federal Volunteer means the Federal status of a System Task Force member who participates in Alert activities and/or DHS-sanctioned preparedness activities. Pursuant to 44 CFR §208.11, DHS intends these appointments to secure protection for such volunteers under the Federal Employees Compensation Act and the Federal Tort Claims Act. This status is not intended to interfere with any preexisting employment relationship between a System member and either a Sponsoring Agency, Cooperating Agency or a Participating Agency employer. System members whom DHS appoints as temporary excepted Federal volunteers will not receive any compensation or employee benefits directly from the United State of America for their service, but will be compensated as set forth in this Agreement through their Sponsoring Agency.

2. Authority.

All National Search and Rescue Response System activities, including the provisions of this Agreement, are governed by the Stafford Act, 42 U.S.C. §§ 5121 through 5206, and its applicable Code of Federal Regulations, 44 CFR §§ 208.1, et seq., Interim Rule "National Urban Search and Rescue Response System," 70 Fed. Reg. 9182 (Feb. 24, 2005), attached as Appendix B, and the Agreement between FEMA and NJOEM/NJ-TF1, attached as Appendix A. To the

extent the Interim Rule is contrary to the Agreement between FEMA and NJOEM, the Interim Rule will prevail. Upon the effective date of the Final Rule governing this subject, the Final Rule shall supersede the Interim Rule in Appendix B.

3. Principal Contacts.

3.1. Sponsoring Agency:

New Jersey Office of Emergency Management
State Director of Emergency Management through the
Bureau Chief, Emergency Response Bureau
P.O. Box 7068
West Trenton, NJ 08628
609-963-6980

3.2. Task Force:

New Jersey Task Force One
Task Force Program Manager
Joint Base McGuire-Dix-Lakehurst, CR#547
Hangar #4, Building #118
Lakehurst, NJ 08733
Phone: 732-657-7001

3.3. Participating Agency:

a. For General Information and Reimbursements:

b. For Activation Notification:

c. Points of Contact for Notification of Activations, for both State and System Task Forces, shall also be provided on the form included in Appendix C. Participating Agency agrees to provide timely notification of any changes to the Point of Contact for Notification of Activations.

4. **Mandatory Minimum Requirements for Task Force Member Participation on the State and System Task Forces.**

As a condition of your status as a Participating Agency under this Agreement, your employee who is a Participant in the State and/or System Task Force, is required to abide by the provisions set forth in this Section.

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- 4.1. Each Participant shall be an employee of the Participating Agency in good standing.

 - 4.2. Participants serving in a Task Force position that requires the individual to hold a license, registration, certificate or other similar authorization to lawfully engage in an activity must hold the appropriate authorization, which shall remain current and validly issued at all times.
 - 4.3. Subject to any applicable FEMA standards, each Participant shall meet the medical/fitness standards established by the Task Force and will promptly notify the Task Force of any medical condition or disability that will prevent performance of the duties of the Task Force position he/she occupies.
 - 4.4. Each Participant shall be available on short notice to mobilize within 2 hours of request and be able to respond on a mission for up to 14 days.
 - 4.5. Each Participant must be capable of improvising and functioning for long hours under adverse working conditions.

 - 4.6. Each Participant shall undergo a fitness for duty examination and receive such inoculations as are specified by the Task Force. The cost for examinations and inoculations shall be the responsibility of the Task Force.
 - 4.7. Each Participant shall complete training from the Task Force on Critical Incident Stress Syndrome and must be aware of its signs, symptoms and corrective measures.
 - 4.8. Each Participant shall complete training from the Task Force in safe working practices and procedures and must understand and adhere to safe working practices and procedures as required in the urban disaster environment.
 - 4.9. Each Participant shall complete US&R training by the Task Force and must have a working knowledge of the US&R System and the Task Force's organizational structure, operating procedures, safety practices, terminology and communication protocols.
 - 4.10. Each Participant shall complete such courses of education and training and other requirements as specified by the Task Force.
 - 4.11. Each Participant shall abide by the rules of conduct established by the Sponsoring Agency and the System Task Force as set forth in the NJ-TF1 Administration Manual.

 - 4.12. Participants shall keep Sponsoring Agency fully informed of pertinent information that would affect their ability to serve in their designated position on the State and/or System Task Forces. If a Participant expects to be unavailable for deployment with the Task Force for any reason for 20 or more consecutive days, Participant shall notify the Sponsoring Agency of the circumstance so as to avoid possible interference with the Task Force's condition of readiness to perform its mission.

- 4.13. A Participant's failure to abide by established rules of conduct or failure to satisfy any mandatory requirement established by the Sponsoring Agency, the System, and/or the Task Force may result in suspension or termination from the Task Force.

5. Participation on State and System Task Forces.

5.1. State Task Force:

- a. Participating Agency understands and agrees to allow its employees who are members of NJ-TF1 to serve in certain designated positions on the State Task Force. A list of those employees, referred to herein as "Participants," is contained in Appendix D.
- b. Participating Agency understands and agrees that a Participant's service on the State Task Force, whether by formal activation or participation in mandatory training exercises, is voluntary and not subject to any reimbursement whatsoever for salary, benefits, or any other costs associated with your employment of the Participant.
- c. Participating Agency understands that Participants in the State Task Force are subject to activation on short notice to respond to incidents and agrees to allow its employee Participants to be available for activation on short notice.
- d. Sponsoring Agency shall advise, at the time of activation, whether such activation is for a State Task Force assignment or a System Task Force assignment as described in Section 5.2.

5.2. System Task Force:

- a. Participating Agency understands and agrees to allow its employee Participants to serve on the System Task Force in addition to the State Task Force, if called to do so.
- b. Participating Agency understands that Participants in the System Task Force are subject to activation on short notice (2 hours) to respond to incidents out-of-state and agrees to allow its employee Participants to be available for activation on short notice.
- c. Participating Agency understands and agrees that Participants activated for the System Task Force are subject to deployment for periods up to fourteen (14) days.
- d. Participating Agency understands and agrees that upon activation for the System Task Force, its employees will be appointed as Temporary Excepted Federal Volunteers.

5.3. Critical Incident Stress Syndrome (CISS) and Management:

- a. CISS is the adverse psychological and/or physiological reaction to a stressful incident.

b. Sponsoring Agency shall provide access to CISS intervention and support during and after any activation.

c. Sponsoring Agency shall provide reimbursement only for authorized CISS activities.

6. Clothing and Equipment.

6.1. Sponsoring Agency will issue to each Participant certain items of personal protective clothing and equipment for use in Task Force activities and operations. In the event of an Activation, Participant shall provide certain additional items of personal clothing and equipment as directed by the Program Manager. Items of clothing and equipment supplied by Sponsoring Agency shall remain the property of Sponsoring Agency and shall be returned promptly whenever a person ceases to be a Participant.

6.2. Subject to FEMA requirements, all uniforms will display the official patch of the Task Force and the official patch of the System, as specified by the Sponsoring Agency. The Sponsoring Agency shall specify the design of the uniform and any identifying insignia or markings.

7. Command, Control and Coordination.

7.1. When a Participant has been activated through the System, or placed at the direction, control and funding of FEMA, such as, for example, during participation in FEMA sponsored training, the ultimate authority for command, control and coordination of the service of the Participant rests with FEMA, exercised through the System chain of command.

7.2. Sponsoring Agency shall exercise direct supervisory authority with respect to Participants during Activations, deployments and other activities of the Task Force conducted by Sponsoring Agency.

7.3. For disciplinary purposes, Sponsoring Agency's authority is limited to temporary suspension or permanent exclusion from participation in the State and System Task Forces. In all other instances where disciplinary action may be necessary, Sponsoring Agency shall report the pertinent circumstances to Participating Agency, who shall cooperate with Sponsoring Agency and shall administer discipline as appropriate in accordance with the Participating Agency's established rules and regulations.

7.4. Nothing in this Agreement is intended to, nor does it, affect the employer-employee relationship between Participating Agency and its employees who are Participants, and Participating Agency shall at all times continue to be fully responsible for all of its employment obligations to its employee Participants, including the compensation and benefits that the Participating Agency has agreed to provide.

7.5. While participating in System activities conducted by the Task Force, Participants shall be subject to and comply with all lawful orders and directions of the authorized

representatives of Sponsoring Agency and the Task Force. Sponsoring Agency retains the right to suspend or exclude any Participant from participation on the Task Force.

8. Readiness Activities.

- 8.1. Sponsoring Agency shall conduct Task Force management, administration, training, equipment procurement and other preparedness activities required by FEMA.
- 8.2. Participating Agency and its employee Participants shall cooperate with Sponsoring Agency and shall participate in the activities as necessary to achieve Task Force preparedness goals and objectives.
- 8.3. Mandatory training activities to be conducted by Sponsoring Agency and/or the FEMA US&R Branch, are required each year. Training calendars established by the FEMA US&R Branch shall be provided to Participating Agency upon publication. Notice of additional trainings required of all Task Force members, if any, shall be provided to Participating Agency as they are developed.
- 8.4. As established by System directives but subject to the availability of federal funding, Sponsoring Agency shall procure and maintain required caches of equipment and supplies. The contents of these caches shall be utilized for deployments of the System Task Force and, subject to federal rules and regulations, will be made available for training activities of Sponsoring Agency. Participants shall use System Task Force cache equipment and supplies only for authorized purposes and shall exercise reasonable care to protect and preserve the property against loss or damage. Participant understands and agrees they shall be financially accountable for any Task Force property that is lost or damaged due to negligence or unauthorized use by the Participant.

9. Notification Procedures and Other Communications.

- 9.1. Alerts and Activation.
 - a. The Sponsoring Agency shall determine whether the Task Force is capable of and will respond to an Activation Order.
 - b. Participating Agency shall, at all times, maintain a Point of Notification for receipt of notices from Sponsoring Agency concerning possible deployments of the Task Force. The Point of Notification shall include 24-hour telephonic and electronic mail capabilities. Point of Notification information shall be provided to the Sponsoring Agency on the form set forth in Appendix C.
 - c. Upon receipt of an Alert or Activation Order, the Sponsoring Agency shall provide prompt notice, by telephone and electronic mail, to the Participating Member of the Task Force. The notice shall provide, to the extent known, the nature and character of the Alert or Activation. The Activation Order shall designate the location of the assembly point and the expected mobilization time.

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- d. Upon receipt of an Activation Order, Participants shall receive authorization from his/her Participating Agency employer and confirm their response to the Task Force assembly point.
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9.2. Mobilization.

- a. Participating Agency shall allow all requisitioned Participants to respond to the designated assembly point within two (2) hours of notification with all required personal clothing, equipment, and required documentation.
- b. Participating Agency understands and agrees that all Participants shall be subject to a medical pre-screening for deployment. Any Participant who fails the screening shall not be deployed.
- c. Participating Agency understands and agrees that the Task Force retains the sole right to determine which Participating Agency employees, if any, will respond with the Task Force when Activated.

10. Reporting and Record Keeping Requirements.

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- 10.1. Participating Agency shall provide Sponsoring Agency with employee compensation information for its Participant employees at least annually, or as changes occur in compensation rates payable to Participants.
 - a. Submission of Participant employee compensation information and other Participant data required by the Sponsoring Agency shall be provided on the form and in the manner set forth in Appendix E.
 - 10.2. Participating Agency shall notify Sponsoring Agency immediately if the Participating employee is no longer employed by the Participating Agency.
 - 10.3. Participating Agency shall notify Sponsoring Agency immediately if the Participating employee is subject to major discipline, suspension, or termination.
 - 10.4. Participating Agency shall provide prompt and accurate reporting as required by this Agreement and its Appendices.
 - 10.5. Sponsoring Agency shall issue a Task Force Picture Identification Card to all State and System Task Force members.
 - 10.6. Sponsoring Agency shall ensure that any medical or other records and information are protected from unauthorized disclosure.
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11. Financial Provisions.

- 11.1. ~~Participating Agency shall receive reimbursement for response expenses that are~~ authorized by FEMA to be incurred by or for the benefit of Participants engaged in System Task Force activities, upon receiving reimbursement for such expenses from the federal government.
- a. In order to ensure proper reimbursement from FEMA, the compensation of Participants on the System Task Force shall be in accordance policies established by FEMA as set forth in the applicable Federal Regulations, from the time of activation and until the Task Force returns, is deactivated and Participants are returned to regular work schedules.
- 11.2. After an Activation, Participating Agency shall provide Sponsoring Agency with a complete cost reimbursement package, including salary costs, fringe benefit costs, and, if eligible, backfill costs, for submission by Sponsoring Agency as part of an overall claim package to FEMA.
- a. The Participating Agency's cost reimbursement package shall be submitted to the Sponsoring Agency within 30 days after the end of the Personal Rehabilitation Period established by FEMA.
 - b. Participating Agency's cost reimbursement package shall be prepared in conformance with applicable federal directives which Sponsoring Agency shall disseminate to Participating Agency.
 - c. All expenses for which Participating Agency seeks reimbursement must be properly ascertained, accumulated and reported to the Sponsoring Agency, and the funds to be utilized for payment must have been reimbursed by or on behalf of FEMA to Sponsoring Agency.
- 11.3. All financial commitments of Sponsoring Agency are subject to the availability and receipt of funds from FEMA to Sponsoring Agency.
- 11.4. There shall be no reimbursement to either the Participating Agency or any Participant employee for costs incurred outside the scope of this Agreement.

12. Media and Information Policy.

- 12.1. Subject to applicable law, including FEMA regulations, all photographs and video taken on deployments will be kept under the control of Sponsoring Agency until use in internal ~~or external education programs or other dissemination is approved.~~
- 12.2. All applicable federal, state, and local media policies will be strictly enforced and followed.

12.3. Sponsoring Agency will have the responsibility for coordination of media coverage and liaison with media sources and representatives concerning activities of the Task Force.

12.4. All media inquiries made directly to Participating Agency shall be referred to Sponsoring Agency for response.

13. Liability, Injury, Workers' Compensation, and Third Party Beneficiary Rights.

13.1. Participating Agency employees who are activated as System Task Force members shall be afforded such coverage for tort liability and workers' compensation as is afforded all System Task Forces and their System Members under Federal law.

13.2. Participating Agency employees who are activated as State Task Force members may be afforded coverage for tort liability, injury and workers' compensation as are afforded under provisions of State law, including but not limited to, the New Jersey Tort Claims Act (NJTCA), N.J.S.A. 59:1-1, et seq., the Emergency Health Powers Act, N.J.S.A. 26:13-1, et seq., provisions of the Disaster Control Act, N.J.S.A. App. A:9-30, et seq., provisions of the New Jersey Workers' Compensation Act, N.J.S.A. 34:15-43, and the statutory immunities and benefits available for search and rescue teams, N.J.S.A. 40A:14-199.

13.3. Except as afforded by the Federal Government, or as permitted by State law, the responsibility for risks associated with claims for tort liability and workers' compensation arising out of participation in the Task Force, either organizationally by the Participating Agency or individually by its Participants, shall be the responsibility of Participating Agency.

13.4. At all times, Participating Agency shall maintain in full force and effect, for the benefit of its employees engaged in State Task Force and/or System activities, workers' compensation and tort liability coverage to the full extent required by law.

13.5. Sponsoring Agency shall be responsible for the actions of its officers and employees occurring during the performance of their obligations under this Agreement subject to the provisions of the NJTCA.

13.6. For claims beyond the purview of the NJTCA, it is covenanted, acknowledged and agreed that neither Sponsoring Agency nor Participating Agency assumes any liability whatsoever for any alleged wrongful acts or omissions of the agents, servants, contractors, or employees of the other.

13.7. Nothing in this Agreement shall be construed to create any rights in third parties or to waive any defenses or immunities available to the Sponsoring Agency under State or Federal laws.

- 13.8. Participating Agency employees shall at no time be considered employees of the State of New Jersey for any purpose, nor will this Agreement establish an agency relationship between the Sponsoring Agency and the Participating Agency.

14. Miscellaneous.

- 14.1. The obligations of the Participating Agency are non-delegable and may not be assigned or assumed by any other person or entity without the prior written consent of the Sponsoring Agency.
- 14.2. Except to the extent Federal law controls, this Agreement shall be construed pursuant to the laws of the State of New Jersey, including but not limited to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- 14.3. No party shall engage in any conduct or activity in the performance of this Agreement, or in participation in the State and/or System Task Forces, that constitutes a conflict of interest or a violation of any State or Federal law.

15. Term and Termination.

- 15.1. This Agreement shall become effective upon its full execution by the parties, and shall remain in effect until terminated on written notice of either party. For purposes of reference and convenience, the parties have agreed that the effective date of the Agreement is September 1, 2016.
- 15.2. This Agreement may be terminated by either party on 30 days written notice, except that Participating Agency cannot terminate this Agreement without the consent of Sponsoring Agency during any time period when the Task Force has been placed on Alert status or has been Activated, if the Alert or Activation affects Participants of the Participating Agency.

16. Entirety of Agreement and Amendments.

- 16.1. This Agreement constitutes the entire understanding and agreement of the parties on the subject matter addressed herein, and supersedes any prior negotiations, representations and agreements, whether written or oral.
- 16.2. This Agreement may be modified or amended only by another agreement approved and executed by both parties. All such amendments shall be attached to this Agreement.
- 16.3. Should any provision of this Agreement be determined to be invalid or unenforceable under applicable law, the provision shall, to the extent required, be severed from the remainder of the Agreement which shall continue in full force and effect.

The terms of this Agreement have been read and understood by the persons whose signatures appear below. The parties agree to comply with the terms and conditions set forth on the preceding pages.

Sponsoring Agency: New Jersey Office of Emergency Management

By: _____ Date: _____
Name: Joseph R. Fuentes, Superintendent
Title: State Director of Emergency Management

Participating Agency:

By: _____ Date: _____
Name:
Title:

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INTRODUCED BY: _____
SECONDED BY: _____

CITY OF HOBOKEN
RESOLUTION NO. : _____

**RESOLUTION TO APPROVE THE ATTACHED AGREEMENT WITH
HUDSON COUNTY REGARDING THE 2016 BYRNE JUSTICE
ASSISTANCE GRANT (JAG) PROGRAM AWARD**

WHEREAS, the City of Hoboken is one (1) of six (6) municipalities in Hudson County eligible to receive an award under the BJA FY16 Edward Byrne Memorial Justice Assistance Grant (JAG) Program; and,

WHEREAS, the City of Hoboken intends to utilize the anticipated grant funding in the amount of \$16,028.00 for eight (8) portable analog/digital radios for the Hoboken Police Department; and,

WHEREAS, there is a City match associated with this Grant, in the amount of Two Thousand Seventy One Dollars and Sixty Cents (\$2,071.60), as the total anticipated cost of the radios is \$18,099.60; and,

WHEREAS, the City of Hoboken and the County of Hudson have negotiated an Agreement relating to the financial utilization of the 2016 JAG Award funds, which Agreement is attached hereto.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hoboken, as follows:

- 1) The attached Agreement between the County of Hudson and the City of Hoboken relating to the City's utilization of the 2016 JAG funding in the amount of \$16,028.00 is hereby approved; and,
- 2) The City is hereby authorized to match the 2016 JAG funding in the amount of \$2,071.60; and,
- 3) Any utilization of funding by the City shall be further restricted by the Application and Award documents, attached hereto as a supplement to the Agreement; and,
- 4) The Mayor or her agent is hereby authorized to enter into the attached Agreement, or a modified Agreement with substantially similar terms which does not have any substantive changes; and,
- 5) This resolution shall take effect immediately upon passage.

Meeting date: September 7, 2016

APPROVED:

Quentin Wiest
QUENTIN WIEST
BUSINESS ADMINISTRATOR

APPROVED AS TO FORM:

Brian Aloia
BRIAN ALOIA, ESQ.
CORPORATION COUNSEL

Councilperson	Yea	Nay	Abstain/Present	Absent
Ravinder Bhalla	/			
Peter Cunningham	/			
Michael DeFusco	/			
James Doyle	/			
Tiffanie Fisher	/			
David Mello	/			
Ruben Ramos, Jr.	/			
Michael Russo	/			
President Jennifer Giattino	/			

A TRUE COPY OF A RESOLUTION ADOPTED BY
THE COUNCIL OF THE CITY OF HOBOKEN, N.J.
AT A MEETING HELD ON: SEP 07 2016

James J. Saracino

CERTIFICATION OF FUNDS

RESOLUTION TITLE:

CITY CLERK

RESOLUTION TO APPROVE THE ATTACHED AGREEMENT WITH HUDSON COUNTY REGARDING THE 2016 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

AMOUNT TO BE CERTIFIED:

\$2,071.60

ACCOUNT NUMBER TO CERTIFY FROM:

6-01-25-241-044

CERTIFICATION:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$2,071.60 is available in the following appropriation: 6-01-25-241-044; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2016; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.

Signed: George DeStefano George DeStefano, CFO



OFFICE OF THE HUDSON COUNTY PROSECUTOR
595 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306

ESTHER SUAREZ
PROSECUTOR

TELEPHONE: (201) 795-6400
FAX: (201) 795-3365

July 28, 2016

Chief Kenneth Ferrante
Hoboken Police Department
1 Police Plaza
Hoboken, New Jersey 07030

RE: 2016 Justice Assistance Grant Program

Dear Chief Ferrante:

Enclosed please find the following:

1. Two (2) copies of the 2016 Hudson County Justice Assistance Grant application. Your municipal grant request is included in this grant. The allowable funding amount came from the U.S. Justice Department. Hudson County will act as fiscal agent.
2. Two (2) copies of an Inter-local Agreement between Hudson County and your municipality. This agreement must be voted on by your municipality governing body, as soon as possible.

Please return two (2) signed copies of the Agreement as well as a copy of your municipality's approved Resolution. An original copy of the Agreement will be returned to you once the County Executive has signed.

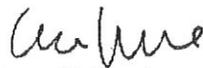
In compliance with the Justice Assistance Grant application, an open meeting needs to be held for public discussion on the Justice Assistance Grant or discussion can take place at your municipal governing body regular meeting.

Funding is subject to the acceptance of the grant application by the U.S. Department of Justice. You will be notified once the application has been approved and funds are available.

If you have questions, please contact Patty Pugh Seiler at (201)795-6400, extension 6610.

Thank you.

Very truly yours,



Anna P. Pereira
Director of Law & Business Operations

APP/pms
Enclosures

CC: Lieutenant John Miskulin

GMS APPLICATION NUMBER 2016-H4306-NJ-DJ

CONTRACT NO. _____

THE STATE OF NEW JERSEY

KNOW ALL BY THESE PRESENT

COUNTY OF HUDSON

INTERLOCAL AGREEMENT

BETWEEN THE MUNICIPALITY OF HOBOKEN, NJ AND COUNTY OF HUDSON, NEW JERSEY

2016 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this _____ day of _____, 2016 by and between the COUNTY of Hudson acting by and through its governing body, hereinafter referred to as COUNTY, and the Municipality of Hoboken, acting by and through its governing body, hereinafter referred to as Municipality, both of Hudson County, State of New Jersey witnesseth:

WHEREAS, this Agreement is made under the authority of New Jersey Law cited as NJSA 40:8A:-1 et seq. and commonly known as the Interlocal Services Act; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interest of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement; and

WHEREAS, the Municipality agrees to provide COUNTY \$ 0.00 from the JAG award for the 2016 Program; and

WHEREAS, the Municipality and COUNTY believe it to be in their best interest to reallocate the JAG funds.

NOW THEREFORE, the COUNTY and Municipality agrees as follows:

Section 1.

Municipality agrees to pay COUNTY a total of \$ 0.00 of JAG funds.

Section 2.

Municipality agrees to use \$16,028.00 for the JAG Program until September 30, 2019.

GMS APPLICATION NUMBER 2016-H4306-NJ-DJ

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against COUNTY other than claims for which liability may be imposed by the New Jersey Tort Claims Act.

Section 4.

Nothing in the performance of this Agreement shall impose any liability for claims against Municipality other than claims for which liability may be imposed by the New Jersey Tort Claims Act.

Section 5.

Each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services of the other party.

Section 6.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 7.

By entering into this Agreement, the parties do not intend to create any obligations expressed or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

MUNICIPALITY OF HOBOKEN, NJ

COUNTY OF HUDSON, NEW JERSEY

Mayor - Hoboken

Deputy County Administrator

ATTEST:

ATTEST:

Municipal Clerk

Clerk, Board of Chosen Freeholders

Municipal Attorney

Donato J. Battista, County Counsel

By law, Government attorneys may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval and should seek review and approval by their own attorney(s).

APPLICATION FOR FEDERAL ASSISTANCE		2. DATE SUBMITTED June 28, 2016	Applicant Identifier
1. TYPE OF SUBMISSION Application Non-Construction	3. DATE RECEIVED BY STATE		State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier
5. APPLICANT INFORMATION			
Legal Name County of Hudson		Organizational Unit Office of The Hudson County Prosecutor	
Address 567 Pavonia Avenue Jersey City, New Jersey 07306-2301		Name and telephone number of the person to be contacted on matters involving this application Seiler, Patricia (201) 795-6400	
6. EMPLOYER IDENTIFICATION NUMBER (EIN) 22-6003443		7. TYPE OF APPLICANT County	
8. TYPE OF APPLICATION New		9. NAME OF FEDERAL AGENCY Bureau of Justice Assistance	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 16.738 CFDA Edward Byrne Memorial Justice Assistance Grant TITLE: Program		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT FY2016 Edward Byrne memorial Justice Assistance Grant - Hudson County	
12. AREAS AFFECTED BY PROJECT Hudson County, Bayonne, Hoboken, Jersey City, North Bergen, Union City and West New York			
13. PROPOSED PROJECT Start Date: October 01, 2015 End Date: September 30, 2019		14. CONGRESSIONAL DISTRICTS OF a. Applicant b. Project NJ13	
15. ESTIMATED FUNDING		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
Federal	\$259,578		
Applicant	\$0		
State	\$0		

Local	\$0	Program is not covered by E.O. 12372
Other	\$0	
Program Income	\$0	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? N
TOTAL	\$259,578	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS REQUIRED.

Close Window

ATTACHMENT 1
PROGRAM NARRATIVE

2016 JUSTICE ASSISTANCE GRANT PROGRAM (JAG)

Hudson County is located in northern New Jersey, across the Hudson River from Manhattan. The county has a total land area of 46.42 square miles and as of a 2012 estimate a population of 660,282. Hudson County consists of 12 municipalities several of which are eligible for Justice Assistance Grant funds. These cities are:

City of Bayonne	\$ 14,855
City of Hoboken	\$ 16,028
City of Jersey City	\$173,538
Township of North Bergen	\$ 10,875
City of Union City	\$ 26,157
Town of West New York	\$ 18,125

TOTAL: \$259,578

The County of Hudson through the County Prosecutor's Office will act as fiscal agent for these municipalities only and will not be receiving any funds. A detailed need analysis narrative and budget for each of the eligible municipalities is as follows:

CITY OF BAYONNE

PURPOSE AREA:

Law Enforcement program eligible for funding under the Justice Assistance Grant Program.

NEED:

The City of Bayonne Police Department has been conducting digital investigations for over 10 years and has identified a need to update and enhance our cyber investigations and digital forensics capabilities.

NARRATIVE:

Today's High-tech environment presents new challenges to law enforcement and the justice system as cyber criminals exploit computers, mobile devices, and the internet to defraud individuals, businesses and government agencies. Digital technology is now used to commit a wide variety of crimes, including but not limited to: Identity Theft, Network Intrusions, Ransomware, and Distribution of Child Pornography. Additionally, digital technology is used to investigate traditional crimes with the evolution of smartphones, and digital security systems. Therefore, it is imperative to address these changes by having the equipment necessary to perform these types of investigations.

The success of our digital investigation efforts is dependent on the ability to identify the evidence, analyze the evidence, and recover the evidence, while maintaining its integrity.

The equipment to be purchased under this year's round of Justice Assistance Funding is a Forensic Workstation Computer with 32 terabytes of raid-based storage, with forensic write-blockers.

Forensic Workstation Computers provide the ability to recover, search, and analyze electronic evidence (data) from computers, mobile devices, and digital media. Additionally, it provides the ability to archive electronic evidence for future analysis.

PERFORMANCE MEASURES:

With the purchase of this equipment, it is anticipated that operational capabilities and efficiency will improve as we will have the ability to conduct more advanced investigations, with greater success.

CITY OF HOBOKEN

PURPOSE AREA:

Law Enforcement program eligible for funding under the Justice Assistance Grant Program.

NEED:

The City of Hoboken has identified a continuing need to obtain replacement portable communications equipment for its personnel in the Hoboken Police Department. A continuing assessment of the Police Department's current stock of portable radios reveals that the current make and model of this equipment is no longer in production, with supplies of replacement parts no longer being produced. As the Hoboken Police Department provides 24 hour-a-day, 7 day-a-week policing services to residents and visitors to the City of Hoboken, it is essential that the current stock of communications equipment continue to be updated. Each officer is assigned an individual portable radio as part of their equipment cadre. At this time, it is estimated that approximately 60 portable radios will require replacement over the next two years.

The Hoboken Police Department currently maintains a budgeted force of 156 sworn personnel, including 18 part-time Class II Special Law Enforcement Officers. The City of Hoboken is located in Hudson County, New Jersey and covers an area of approximately 1.05 sq. miles with an estimated population of 53,312 residents as of 2014. Hoboken is known as a popular night time destination for social activities in the metropolitan area. The city's 131 Licensed Liquor establishments help to promote this thriving night life scene. Hoboken also plays host to several popular cultural events which include, but are not limited to the following;

an annual St. Patrick's Day celebration, a Spring & Fall Arts & Music Festival, waterfront musical performances and two cultural events, the St. Ann's Feast & the Hoboken Italian Festival.

As such, these events draw thousands of visitors into the city, increasing the workload of police personnel out on patrol. It is therefore essential that patrol personnel are provided with the most reliable communications equipment that can be obtained by the department.

NARRATIVE:

The continued acquisition of updated portable communications equipment will provide these police personnel with the ability to effectively respond to increased workload for police services within the city. As the City moves forward with a long term plan to update and upgrade the department's communication system, the addition of this new equipment will provide the increased reliability & functionality needed at this time. In addition, the technology of this requested equipment will enable the City of Hoboken to seamlessly transition this equipment to a new proposed digital communications system as part of the previously mentioned plan. This transition will enhance the Hoboken Police Department's ability to provide its personnel with a solid and reliable communications system, capable of handling the approximately 95,000 calls for addressed on a yearly basis.

PERFORMANCE MEASURES:

With this new equipment, it is anticipated that officer efficiency will increase when responding to calls for service. Concurrently, public safety will be enhanced & quality of service to the public will improve with the ability to have better, more reliable communications.

In addition, the purchase of these type radios can become cost effective as future plans to transition from analog to digital communication formats will allow these portable units to be reconfigured and reprogrammed to a digital format as opposed to the current units, which cannot be re-configured and would have to be replaced.

CITY OF JERSEY CITY

PURPOSE AREA:

Continuation project that was previously funded under the Edward Byrne Memorial Justice Assistance Grant Program (JAG)

NEED:

The Jersey City Police Department will continue to utilize this funding for the continuation of foot and vehicular patrol units that address quality of life complaints from residents in selected hot spot areas throughout Jersey City. The full **\$173,538.00** grant will service overtime assignments and implement other alternative methods of community policing services as needed

on selected weekdays and weekends. The usage of these funds will also focus police deployment during holiday observances and regional security alert periods. The following proposed budget is offered for review and approval.

NARRATIVE:

Quality of Life Police Overtime

Consistent with previous BJA submissions, we propose to use this year's allocation of JAG funds to continue Quality of Life uniform patrols through fixed posts assignment of officers during the evening hours. Previous BJA awards have allowed the department to deploy uniform officers on fixed/foot posts at target "hot spot" locations proving these assignments to be effective and resulting in a reduction in disorder and crime. We propose to continue this tactic and implement other alternative methods in support of our ongoing community based policing efforts to improve conditions and reduce crime.

We will continue to establish high visibility of police presence within identified hot spots to promote a zero-tolerance approach to quality of life issues. Quality of life posts will be identified through analysis of calls for service, reported crime, and community input.

Quality of Life Overtime Analysis of Need

A careful analysis of police calls for service shows that a majority of the crimes occur between the hours of 3PM and 11PM then gradually declining through the early morning hours. This finding is consistent with the studies of delinquency and gang related activity. A review of reported crime shows the same temporal distribution, with more serious violent crime being reported in the evening hours as a result of these findings patrols will also be assigned during special events and holidays.

Currently there are 25 QOL, (quality of life) posts throughout Jersey City and we have also deployed "Titan Teams and a Shooting Response Team"; that compromise of a group of officers sent into problematic areas to eradicate the reported problems. The tactical operations of this unit are unexpected and prove to be highly effective and supported by the communities in which they are assigned. Districts will continue to identify and describe each QOL post by type of complaints and crime problems, times of occurrence and prescribe a law enforcement activity and adjust our deployment by time and location accordingly.

PERFORMANCE MEASURES:

Goal 1: *Continue to increase the presence of police officers in high crime areas*

Outcome: Reduce crime in targeted area through focused police patrols utilizing overtime.

Measurement:

Track arrests made in target areas, categorize arrest and utilize data for impact comparison
Track number of summons issued for parking and moving violations, loud music, drinking in public and other quality of life violations. Compare numbers with previous month/year.

Goal 2: *Build stronger police community partnerships*

Outcome: Improve relationships between police and local community.

Measurement:

Police patrols will interact with the community and local businesses while on patrol. These contacts will be documented.

Officers will encourage community to get involved and officers will get involved with the community.

Contacts with local community will provide police with tactical and operational intelligence.

TOWNSHIP OF NORTH BERGEN

PURPOSE AREA:

Law Enforcement program previously eligible for funding under the Byrne Justice Assistance Grant (JAG) Program.

NEED:

The Township of North Bergen has identified the need to increase security and restrict access to its annex.

NARRATIVE:

The North Bergen Police Department recently invested in a biometric security system to increase site security and target hardening at the newly renovated police headquarters facility. Users can only gain access to the facility by using their fingerprints. This practice has eliminated the use of Simplex locks whose codes are easily shared, or swipe cards which can be lost, stolen, or shared. We are also able to restrict access to certain locations for certain employees and have increase personnel accountability.

The initial investment was limited to headquarters due to funding issues. The police department wishes to expand its biometric security system to its Annex facility. The annex facility consists of the Police Department training classrooms, roll call room, lockers, break room, garages, and various offices. Our existing access system is obsolete and access cards are no longer being manufactured for the system creating security and accessibility issues.

PERFORMANCE MEASURES:

It is anticipated that the introduction of this new hardware/software security solution will increase site security, as well as officer safety and accountability.

CITY OF UNION CITY

PURPOSE AREA:

Law Enforcement program previously eligible for funding under Byrne Justice Assistance Grant Program.

NEED:

The City of Union City is continuously seeking ways to increase the efficiency of police services and investigative capabilities through the addition of High Definition Cameras destined to be installed throughout the police department since our current camera system is failing due to obsolescence and aging. At present the Union City Police Department is seeking to enhance its surveillance system in these cost conscious times. It is the City's goal to maximize the effective use every dollar the City receives for improvement of police resources.

NARRATIVE:

The Union City Police Department has been utilizing the same cameras, Digital Video Recorder (DVR), and surveillance system for approximately over decade in its police station. The police department is experiencing tough times in its attempt to stay current with technological advances and the evolution of surveillance hardware and software. In order to have the required resources to combat ever-evolving crimes, it is critical to have the proper tools not only to face these threats but to prevent them when possible. Our surveillance system (cameras and DVR) are constantly being repaired as parts breakdown as a result of aging and obsolescence. The system and its peripherals have past their end of life for several years now and the current condition of our surveillance system present a problem to the operations of the police department since it is one of the most important resources that facilitate the administration of essential police services. With this in mind, this year we have determined that the best use of this year's BJA funding is for the purchase and replacement of the police surveillance system.

PERFORMANCE MEASURES:

With new equipment, it is anticipated that police resources will enhance the police department's investigative capabilities and its police services.

TOWN OF WEST NEW YORK

PURPOSE AREA:

Law Enforcement program previously eligible for funding under Byrne Justice Assistance Grant Program.

NEED:

The Town of West New York is continuously seeking ways to reduce crime in general and in particular, violent crime. At present, the West New York Police Department is seeking to enhance its efforts in reducing violent crime.

NARRATIVE:

The Town of West New York Retail Business propose to use the 2016 JAG funding for the installation of surveillance cameras in the Retail Business areas. We have identified two areas that are in need of surveillance camera systems where a large percentage of crime has been occurring in the town. The installation of the ten surveillance cameras will provide full-time monitoring of these target areas.

Camera Locations

50th to 67th Bergenline Avenue

All new cameras will have the latest and most current software technology available.

PERFORMANCE MEASURES:

The Town will monitor crime trends in the targeted areas. The expectations are in reduction in violent crime and/or high clearance rates on crimes occurring in the targeted areas.

ATTACHMENT II

2016 JUSTICE ASSISTANCE GRANT PROGRAM (JAG)

BUDGET NARRATIVE

The Hudson County Prosecutor's Office oversees planning and administration for law enforcement needs with regards to the Justice Assistance Grant Program.

The Hudson County Executive has requested that the Hudson County Prosecutor's Office be responsible for the administration of these funds including distributing the funds, monitoring the award, submitting reports including performance measures and program assessment data, and providing ongoing assistance to any subrecipients of the funds.

The Office of the Hudson County Prosecutor will not require administrative funds to support and implement the Justice Assistance Grant program.

City of Bayonne	\$ 14,855
City of Hoboken	\$ 16,028
City of Jersey City	\$173,538
Township of North Bergen	\$ 10,875
City of Union City	\$ 26,157
Town of West New York	\$ <u>18,125</u>

TOTAL: \$259,578

CITY OF BAYONNE BUDGET

<u>Description:</u>	<u>Unit Cost</u>	<u>Total Cost</u>
(1) Forensic Workstation (includes; 2 Processors, Operating System, 8 hard drives, graphics processing unit, burner, forensic card reader, power supply unit, 6 SSDs for files, processing and databases	\$12,995	\$12,995
(1) Tableau T-356789	\$ 995	\$ 995
(1) Forensic UltraDock FUDv5.5	\$ 295	\$ 295
(1) Tableau T8U Write Blocker	\$ 459	\$ 459
Computer Accessories	\$ 147	\$ 147

TOTAL PROJECT COST: \$14,855
TOTAL GRANT AWARD: \$14,855

CITY OF HOBOKEN BUDGET

<u>Description:</u>	<u>Unit Cost</u>	<u>Total Cost</u>
(8) Portable Analog/Digital Radios (includes charger, remote microphone/ speaker, belt holster, extra extended charge battery, configuration, programming & warranty)	\$2,262.45	\$18,099.60

TOTAL PROJECT COST: \$18,099.60
TOTAL GRANT AWARD: \$16,028.00

The City of Hoboken will fund the difference between the Total Project Cost and the Grant Award Amount.

CITY OF JERSEY CITY BUDGET

<u>District</u>	<u>6pm-11pm</u>	<u>Overtime Rate</u>	<u>Total per day</u>
North	5 officers	\$ 90.00	\$2,250.00
South	5 officers	\$ 90.00	\$2,250.00
East	5 officers	\$ 90.00	\$2,250.00
West	5 officers	\$ 90.00	\$2,250.00
North	1 Supervisor	\$125.00	\$ 625.00
South	1 Supervisor	\$125.00	\$ 625.00
East	1 Supervisor	\$125.00	\$ 625.00
West	1 Supervisor	\$125.00	\$ 625.00

Cost per tour = \$ 11,500.00

Overtime Budget = \$173,538.00

Divided by = \$11,500.00/tour

The number of projected assignments available under 2016 JAG grant:

15 TOURS 5 OFFICERS 1 SUPERVISOR 5 HRS. PER DISTRICT \$172,500.00
 4 OFFICERS 3HRS \$ 1,080.00
Total overtime cost: \$173,580.00

TOTAL PROJECT COST: \$173,580

TOTAL GRANT AWARD: \$173,538

The City of Jersey City will fund the difference between the Total Project Cost and the Grant Award Amount.

TOWNSHIP OF NORTH BERGEN BUDGET

<u>Qty.</u>	<u>Description</u>	<u>Unit Cost</u>	<u>Extended Cost</u>
1	Biometric access reader, controller, and installation for front entrance.	\$9,120.00	\$9,120.00
1	Additional access point for rear entrance.	\$3,267.00	\$3,267.00

TOTAL PROJECT COST: \$12,387

TOTAL GRANT AWARD: \$10,875

The Township of North Bergen shall fund the difference between the Total Project Cost and the Grant Award Amount.

CITY OF UNION CITY BUDGET

<u>Description:</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Surveillance Camera System		
(2) NVR, 64-Channel, H264, HDMI	\$ 2,009.25	\$ 4,018.50
(4) Surveillance OEM Hard Drives	\$ 371.00	\$ 1,484.00
(2) PoE Managed Switch with Uplinks	\$ 506.25	\$ 1,012.50
(31) Outdoor Domes	\$ 381.20	\$11,817.20
(5) High Frame Rate Smart Camera	\$ 3,003.75	\$15,018.75
(5) Wall Mount Brackets	\$ 31.05	\$ 155.25
(1) LED Monitor	\$ 185.00	\$ 185.00
(2) CCTV Power Supply Box	\$ 75.00	\$ 150.00
(7) Blue 550MHZ CAT-6 1000FT Box	\$ 201.00	\$ 1,407.00
(2) 2500-Watt Online Rackmount	\$ 1,552.50	\$ 3,105.00
(1) 48PRT C6 HIPERLINK P/P 2RMS	\$ 325.00	\$ 325.00
(1) Stand Rack	\$ 300.00	\$ 300.00
(1) Tie Wraps, tape, Velcro, etc.	\$ 250.00	\$ 250.00
(1) Installation and programming	\$14,600.00	\$14,600.00

TOTAL PROJECT COST: \$53,828.20
TOTAL AWARD AMOUNT: \$26,157.00

The City of Union City will fund the difference between the Total Project Cost and the Grant Award Amount.

TOWN OF WEST NEW YORK BUDGET

<u>Description:</u>	<u>Unit Cost</u>	<u>Total Cost</u>
10 Camera System & installation	\$1,875.00	\$18,750.00

TOTAL PROJECT COST: \$18,750.00
TOTAL GRANT AWARD: \$18,125.00

The Town of West New York will fund the difference between the Total Project Cost and the Grant Award Amount.

ATTACHMENT III

2016 JUSTICE ASSISTANCE GRANT PROGRAM (JAG)

REVIEW NARRATIVE

The Hudson County Board of Chosen Freeholders commissioners will pass a resolution supporting the memorandum of understanding after a thirty day review on August 11, 2016 in an open public meeting pursuant to the Open Public Meeting Act of the State of New Jersey.

The following eligible municipalities are expected to pass the memorandum of understanding on the following dates after a thirty day review:

TOWN	DATE
Bayonne	August 17, 2016
Hoboken	August 3, 2016
Jersey City	August 17, 2016
North Bergen	August 17, 2016
Union City	August 3, 2016
West New York	August 18, 2016

It is the responsibility of the eligible municipalities to have an open meeting. It is their discretion whether to have the open meeting before the scheduled governing body's regular meeting or at the regular meeting.

ATTACHMENT IV

COUNTY OF HUDSON (NJ)

2016 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)

ABSTRACT

The City of Bayonne, City of Hoboken, Jersey City, the Township of North Bergen, the City of Union City and the Town of West New York will utilize Fiscal Year 2016 JAG funding to implement projects that encompass the purpose area of law enforcement and technology programs.

One municipality is utilizing their funding for continued Quality of Life overtime patrols in high crime target areas. Other municipalities are using this year's funding to replace outdated and obsolete portable radios and to purchase new computer hardware/software systems for enhanced security and efficient investigations.

Two municipalities are using this year's funding to expand and enhance their surveillance camera systems to provide full time monitoring in high crime areas.

The County of Hudson, through the Prosecutor's Office will serve as the fiscal agent for the award and will not receive funding.

2016 JAG PROJECT IDENTIFIERS

Computer Software/Hardware
Crime Prevention
Equipment – General
Overtime

OVERVIEW

PUBLIC NOTICE

Edward Byrne Memorial Justice Assistance Grant JAG FY 2016 Local Solicitation

The public is invited to review and comment on all relative information applications as it is on file with the clerks of the following municipalities:

City of Bayonne	\$ 14,855
City of Hoboken	\$ 16,028
City of Jersey City	\$173,538
Township of North Bergen	\$ 10,875
City of Union City	\$ 26,157
Town of West New York	<u>\$ 18,125</u>
TOTAL:	\$259,578

Information is also available by contacting:

The Office of the County Prosecutor
595 Newark Avenue
Jersey City, New Jersey 07306
(201) 795-6400



OFFICE OF THE HUDSON COUNTY PROSECUTOR

**595 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306**

**ESTHER SUAREZ
PROSECUTOR**

**TELEPHONE: (201) 795-6400
FAX: (201) 795-3365**

June 23, 2016

Bureau of Justice Assistance
Office of Justice Programs
U.S. Department of Justice
810 Seventh Street, NW
Washington, DC 20531

RE: Edward Byrne Memorial Justice Assistance Grant
(JAG) Program – FY 2016 Local Solicitation

Dear Sir/Madam:

This letter will confirm that the Hudson County Prosecutor's Office acts as the fiscal agent for the six (6) Hudson County municipalities eligible to receive an award under the BJA FY16 Edward Byrne Memorial Justice Assistance Grant (JAG) Program.

The Hudson County Prosecutor's Office IS NOT currently on high risk by another federal grant making agency.

Thank you.

Very truly yours,

Esther Suarez
Hudson County Prosecutor

ES/pms



CITY OF BAYONNE
POLICE DEPARTMENT

630 AVENUE C

BAYONNE, NEW JERSEY 07002
(201) 858-6900

ROBERT KUBERT
Public Safety Director

DREW NIEKRASZ
Chief of Police

June 27th, 2016

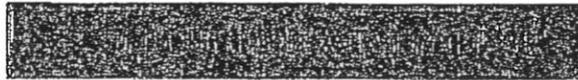
DISCLOSURE OF PENDING APPLICATIONS

Justice Assistance Grant FY2016 Edward Byrne Memorial Justice Assistance Grant

The City of Bayonne does not have pending applications within the past 12 months for federally funded assistance that include requests for funding or support for the same project being proposed under this solicitation and will cover identical cost items outlined in the budget narrative and worksheet in the application under solicitation.



Kenneth F. Ferrante
Chief of Police



CITY of HOBOKEN
ONE POLICE PLAZA
HOBOKEN, NJ 07030-5704

www.HobokenPD.com



Telephone: (201) 420-2002
Facsimile: (201) 714-9415

June 22, 2016

**Disclosure of Pending Applications
Justice Assistance Grant 2016**

Edward Byrne Memorial Justice Assistance Grant (JAG) Program
Bureau of Justice Assistance Programs Office

Sir/Ms'am,

The City of Hoboken does not have any pending applications within the last (12) twelve months for federally funded assistance that include requests for funding or support for the same project(s) being proposed under this solicitation for the identical cost items outlined in the budget narrative and work sheet in the application under this solicitation.

Sincerely,

Kenneth F. Ferrante
Chief of Police
Hoboken Police Department
1 Police Plaza
Hoboken, NJ 07030
FerranteK@HobokenPD.org
201.420.2002

cc: JAG 2016 file



HON. STEVEN RULOP
MAYOR

JERSEY CITY POLICE DEPARTMENT
OFFICE OF THE DIRECTOR
1 Journal Square Plaza, 4th Floor
Jersey City, New Jersey 07306
201-547-5301 Fax 201-547-4913



JAMES SHEA
PUBLIC SAFETY
DIRECTOR

June 27, 2016

DISCLOSURE OF PENDING APPLICATIONS

Edward Byrne Memorial Justice Assistance Grant FY 2016

Jersey City does not have pending applications within the last 12 months for federally funded assistance that include requests for funding or support for the same projects being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation.



ALLEN PASCUAL
Commissioner

**TOWNSHIP OF NORTH BERGEN
DEPARTMENT OF PUBLIC SAFETY**

POLICE DEPARTMENT

LAW & PUBLIC SAFETY BUILDING
4233 KENNEDY BOULEVARD
NORTH BERGEN, NJ 07047



ROBERT J. DOWD
Chief of Police

MEMORANDUM

**Subject: Disclosure of Pending Applications
2016 Justice Assistance Grant (JAG)**

June 16, 2016

To whom it may concern:

The purpose of this memorandum is to clarify that the Township of North Bergen does not have pending applications within the last 12 months for federally funded assistance that include requests for funding or support for the same projects being proposed under this solicitation. The Township will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation. Any costs in excess of the grant award shall be covered by township revenues.

Respectfully,

Peter Fasilis
Deputy Chief of Police

CC: Chief Robert J. Dowd
Cc: JAG 2016 File



DEPARTMENT OF PUBLIC SAFETY
UNION CITY POLICE DEPARTMENT

3715 PALISADE AVE
UNION CITY, NJ 07087
TEL/201-348-5780
FAX/201-348-5793



Mayor Brian P. Stack
Director of Public Safety

Richard Molinari
Chief of Police

June 27, 2016

DISCLOSURE OF PENDING APPLICATIONS

Justice Assistance Grant FY2016 Edward Byrne Memorial Justice Assistance Grant

The City of Union City does not have pending applications within the last 12 months for federally funded assistance that include requests for funding or support for the same projects being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation.

PROTECTING AND SERVING WITH
COMPASSION * PROFICIENCY * RESPECT
Union City is an Equal Opportunity Employer



Mayor Felix E. Roque MD
Public Safety

POLICE DEPARTMENT
WEST NEW YORK, N.J. 07093



Robert Antolos
Police Director

June 27, 2016

DISCLOSURE OF PENDING APPLICATIONS

Justice Assistance Grant 2016

The Town of West New York does not have pending applications within the last 12 months for federally funded assistance that include requests for funding or support for the same project(s) being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation.

Sincerely,

Robert Antolos
Police Director

NOTE: You must click on the "Accept" button at the bottom of the page before closing this window



OMB APPROVAL
NUMBER 1121-0140

EXPIRES 03/31/2016

STANDARD ASSURANCES

The Applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including OMB Circulars A-21, A-87, A-102, A-110, A-122, A-133; Ex. Order 12372 (intergovernmental review of federal programs); and 28 C.F.R. pts. 66 or 70 (administrative requirements for grants and cooperative agreements). The applicant also specifically assures and certifies that:

1. It has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

3. It will give the awarding agency or the Government Accountability Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.

4. It will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63, and the award term in 2 C.F.R. § 175.15(b).

5. It will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).

6. It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 7 94); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); see Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).

7. If a governmental entity:

- a. it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
- b. it will comply with requirements of 5 U.S.C. §§ 1501-08 and §§ 7324-28, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

Accept

NOTE: You must click on the "Accept" button at the bottom of the page before closing this window

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE CHIEF FINANCIAL OFFICER**

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Acceptance of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying," 2 CFR Part 2867, "DOJ Implementation of OMB Guidance on Nonprocurement Debarment and Suspension," and 28 CFR Part 83, "Government-wide Debarment and Suspension," and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

Pursuant to Executive Order 12549, Debarment and Suspension, implemented at 2 CFR Part 2867, for prospective participants in primary covered transactions, as defined at 2 CFR Section 2867.20(a), and other requirements:

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Have not within a two-year period preceding this application been convicted of a felony criminal violation under any Federal law, unless such felony criminal conviction has been disclosed in writing to the Office of Justice Programs (OJP) at Ojpcmpliancereporting@usdoj.gov, and, after such disclosure, the applicant has received a specific written determination from OJP that neither suspension nor debarment of the applicant is necessary to protect the interests of the Government in this case.

(d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(e) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. FEDERAL TAXES

A. If the applicant is a corporation, the applicant certifies that either (1) the corporation has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, or (2) the corporation has provided written notice of such an unpaid tax liability (or liabilities) to OJP at Ojpcmpliancereporting@usdoj.gov, and, after such disclosure, the applicant has received a specific written determination from OJP that neither suspension nor debarment of the applicant is necessary to protect the interests of the Government in this case.

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

4. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 83, Subpart F, for grantees, as defined at 28 CFR Sections 83.620 and 83.650:

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 810 7th Street, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

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

Accept

INTRODUCED BY: MD

SECONDED BY: John J. Maser

**CITY OF HOBOKEN
RESOLUTION NO. _____**

RESOLUTION AWARDING A PROFESSIONAL SERVICE CONTRACT TO PETRY TRAFFIC, LLC FOR PROFESSIONAL TRAFFIC ENGINEERING SERVICES TO THE CITY OF HOBOKEN FOR THE DESIGN OF A NEW TRAFFIC SIGNAL AT MADISON STREET AND OBSERVER HIGHWAY IN AN AMOUNT NOT TO EXCEED \$16,700.00 FOR A TERM TO COMMENCE SEPTEMBER 8, 2016

WHEREAS, the City of Hoboken has a need to obtain professional engineering services for the design of the new traffic signal at Madison Street and Observer Highway; and,

WHEREAS, prior work related to this project has been performed by John Jahr, who was formerly associated with Maser Consulting, an authorized pool engineering firm for the City of Hoboken; and,

WHEREAS, John Jahr has recently disassociated from Maser Consulting and is now the principal of the firm Petry Traffic, LLC ("Petry"); and,

WHEREAS, a proposal for these services was received from Petry on August 3, 2016, in the amount of \$16,700.00, and therefore below the threshold for a governing body to award a fair and open contract pursuant to state "Pay-to-Play" laws; and,

WHEREAS, the City planned to issue Petry a purchase order for the work to be performed since it was below the threshold; and,

WHEREAS, the City authorized Petry to begin performing the requested service; and,

WHEREAS, upon further review of the project, it was determined that pursuant to Hoboken City Code Chapter 20A, all contracts for professional services must be awarded on the basis of qualification based, competitive negotiations; and,

WHEREAS, because Petry performed this service it is the recommendation of Hoboken Corporation Counsel that the City approve entering into a contract with Petry; and,

WHEREAS, the Administration recommends approval of this contract with Petry for the sake of continuity, due to the fact that principal John Jahr is familiar with this project as he performed extensive related work while associated with Maser Consulting; and,

WHEREAS, Petry Traffic, LLC has completed and submitted a Business Entity Disclosure Certification which certifies that the vendor has not made any reportable

contributions to a political or candidate committee in the City of Hoboken in the previous one year, and that the contract will prohibit the vendor from making any reportable contributions through the term of the contract and therefore the contract is in compliance with all New Jersey state "Pay-to-Play" laws; and,

WHEREAS, Petry Traffic LLC has submitted a Business Registration Certificate, a Stockholder Disclosure Statement, and all necessary EEOC forms, prior to consideration of this resolution.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Hoboken authorizes the Mayor to enter into a contract with Petry Traffic, LLC, as described herein, for the services described in their attached August 3, 2016 proposal for a term to expire upon completion of the project, but in no event later than September 7, 2017, and for an amount not to exceed \$16,700.00; and,

BE IT FURTHER RESOLVED, that the Business Disclosure Entity Certification, Stockholder Disclosure Certification, and all other accompanying business and contract compliance documentation, and the Determination of Value, shall be placed on file with this resolution; and,

BE IT FURTHER RESOLVED, that no minimum payment is implied or guaranteed and the City reserves the right to cancel this Agreement at any time and Petry shall only be paid for the work completed or on a pro-rated amount if payment arrangements are based upon a fixed retainer; and,

BE IT FURTHER RESOLVED, that the City Clerk shall publish this resolution in the City's official newspapers immediately; and,

BE IT FURTHER RESOLVED that this resolution shall take effect immediately, subject to the following conditions:

1. The terms of Petry Traffic, LLC proposal shall govern the contract, and no changes may be made without the prior written consent of both parties.
2. Any change orders which shall become necessary shall be subject to the City's ability to appropriate sufficient funds, which appropriation shall be at the sole discretion of the City Council.
3. The Council hereby authorizes the Mayor, or her designee to execute any and all documents and take any and all actions necessary to complete and realize the intent and purpose of this resolution.
4. The Mayor, or her designee is hereby authorized to execute an agreement with:

Petry Traffic, LLC
155 Passaic Avenue
Fairfield, NJ 07004

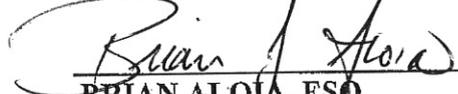
Meeting date: September 7, 2016

Councilperson	Yea	Nay	Abstain/Present	Absent
Ravinder Bhalla	/			
Peter Cunningham	/			
Michael DeFusco	/			
James Doyle	/			
Tiffanie Fisher	/			
David Mello	/			
Ruben Ramos, Jr.	/			
Michael Russo	/			
President Jennifer Giattino	/			

APPROVED:


QUENTIN WIEST
BUSINESS ADMINISTRATOR

APPROVED AS TO FORM:


BRIAN ALOIA, ESQ.
CORPORATION COUNSEL

CERTIFICATION OF FUNDS

RESOLUTION TITLE:

RESOLUTION AWARDING A PROFESSIONAL SERVICE CONTRACT TO PETRY TRAFFIC, LLC FOR PROFESSIONAL TRAFFIC ENGINEERING SERVICES TO THE CITY OF HOBOKEN FOR THE DESIGN OF A NEW TRAFFIC SIGNAL AT MADISON STREET AND OBSERVER HIGHWAY IN AN AMOUNT NOT TO EXCEED \$16,700.00 FOR A TERM TO COMMENCE SEPTEMBER 8, 2016

AMOUNT TO BE CERTIFIED:

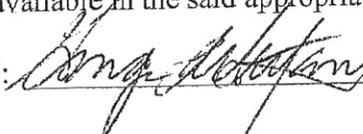
\$16,700.00

ACCOUNT NUMBER TO CERTIFY FROM:

6-31-55-710-002

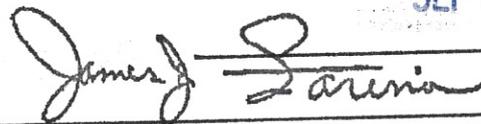
CERTIFICATION:

I, George DeStefano, Chief Financial Officer of the City of Hoboken, hereby certify that \$16,700.00 is available in the following appropriation: 6-31-55-710-002; and I further certify that this commitment together with all previously made commitments and payments does not exceed the funds available in said appropriation for the CY2016; and I further certify that the funds available in the said appropriation are intended for the purpose herein committed.

Signed:  George DeStefano, CFO

A TRUE COPY OF A RESOLUTION ADOPTED BY
THE COUNCIL OF THE CITY OF HOBOKEN, N.J.
AT A MEETING HELD ON:

SEP 07 2016



CITY CLERK

Budget Account Maintenance

Account: **6-31-55-010-000** Desc: **710 TRANSPORTATION PLANNING** Cap Flag:

Acct Type: Control Chk Acct: **IPARK UTILITY** Class Id:

Fund Type: Budget 7 Class Id 2:

Activity: Misc **GN Accounts** Adopted Budget Detail

Activity To Date:

Encumber	33,082.84	Budgeted	110,450.00	Expended	-00	Current Period	-00
Expended	31,653.70	Balance:	45,707.46	Trans-In	-00	Trans-In	-00
Trans-In	.00	YTD Requested	16,700.00	Trans-Out	-00	Trans-Out	-00
Trans-Out	.00	Requested Balance	29,007.46	Reimburse:	-00	Reimburse:	-00
Reimburse:	.00						
Cancel	.00						

September 7, 2016
09:39 AM

CITY OF HOBOKEN
Budget Entry Verification Listing

Page No: 1

Batch Id: GDS Batch Date: 09/07/16 Batch Type: Standard

Account No. Account Description	Type	Entry Description	Amount	Seq
6-31-55-710-002 710 Contracted Services	Encumbrance	CFO CERT MEETING 09/07/2016 PENTRY TRAFFI	16,700.00	1

WARNING: This account would have a negative balance: 6-31-55-710-002. Balance would be: 28,200.00-.

September 7, 2016
09:39 AM

CITY OF HOBOKEN
Budget Entry Verification Listing

Page No: 2

Fund Description	Fund	Expenditures	Reimbursements	Transfer In	Transfer Out	Cancel	Encumbrances
PARKING UTILITY FUND	6-31	0.00	0.00	0.00	0.00	0.00	16,700.00
Total of All Funds:		0.00	0.00	0.00	0.00	0.00	16,700.00

	Entries	Amount
Expenditures:	0	0.00
Reimbursements:	0	0.00
Transfer In:	0	0.00
Transfer Out:	0	0.00
Cancel:	0	0.00
Encumbrance:	1	16,700.00
Total:	1	16,700.00

There are warnings in this listing, but can proceed with update.

September 7, 2016
09:39 AM

CITY OF HOBOKEN
Budget Batch Update/Posting Report

Page No: 1

	Updated Entries	Updated Amount		
Reimbursements:	0	0.00		
Expenditures:	0	0.00		
Transfer In:	0	0.00		
Transfer Out:	0	0.00		
Cancel:	0	0.00		
Encumbrances:	1	16,700.00		

Batch: GDS Updated Entries: 1 Updated Amount: 16,700.00 Ref Num: 4347

PETRY  **TRAFFIC, LLC**

August 3, 2016

VIA E-MAIL

Mary,

John Morgan
Director
City of Hoboken
94 Washington Street
Hoboken, NJ 07030

*PLEASE issue A P.O. for
this and
use Account # for
planning dept.*

Re: Traffic Signal Design
Madison Street and Observer Highway
City of Hoboken, Hudson County, New Jersey
Proposal No. 160030T

-710-002 *THANKS
Gina*

Dear Mr. Morgan:

Petry Traffic is pleased to submit this proposal for Professional Traffic Engineering Services associated with design of a new traffic signal at the intersection of Madison Street and Observer Highway in the City of Hoboken. The following outlines our anticipated scope of services:

This proposal is divided into four sections as follows:

- Section I – Scope of Services
- Section II – Business Terms and Conditions
- Section III – Technical Staff Hourly Rate Schedule and Reimbursable Expenses
- Section IV – Client Contract Authorization

The following scope of services has been separated into phases so that it may be more easily reviewed. The order in which the phases are presented generally follows the sequence in which the project will be accomplished; however, depending on the project, the various authorized services contained in this proposal may be performed in a sequence as deemed appropriate by Petry Traffic to meet project schedules.

155 Passaic Avenue, Fairfield, New Jersey 07004
973-227-7005
973-227-7074 (fax)
www.petrytraffic.com



SECTION I – SCOPE OF SERVICES

PHASE 1 SURVEY and BASEMAPPING

Prior to initiating field work, our survey team will obtain and review pertinent records, plans, and reports available from the County and City. After reviewing these records, we will be performing a field survey. The following outlines the procedures for this effort:

SURVEY LIMITS

1. The survey limits are to extend 250 feet along Observer Highway and 200 feet along Madison Street.

RIGHT-OF-WAY

2. Existing right-of-way will be obtained through tax maps. No deeds or filed map review is included in this proposal.

TOPOGRAPHIC SURVEY

3. The topographic survey will be prepared following Hudson County and NJDOT graphic standards.
4. All roadway features are to be located as follows:
 - a. Edge of pavement
 - b. Edge of traveled way
 - c. Existing pavement markings
 - d. Existing signage with sign designations
 - e. Existing utilities, above and below ground, lighting and height of above-ground services at intersection.
 - f. Existing storm water drainage structures, including inverts and pipe sizes.
 - g. All remaining existing features.
5. Roadway construction baselines and stationing are to be established for all legs of the intersection.
6. The survey baseline is to be located outside the zone of construction and tied to three fixed objects. Digital swing ties are to be provided on the base map.
7. Buildings and parking facilities within 50 feet of R.O.W. limits.



GENERAL SURVEY REQUIREMENTS

8. Survey is to utilize the N.J. Plane Coordinate System.
9. All elevations are to be NGVD 1929.
10. A digital drawing in AutoCAD.DWG format shall be provided.
11. All utility companies are to be contacted and given the opportunity to mark all facilities in the project area prior to survey commencement.
12. Reference material to be provided to Petry:
 - a. Tax Maps
 - b. Municipal Utility Maps
 - c. Zoning map

PHASE 2 TRAFFIC ANALYSIS

A Warrant Report must be prepared in accordance with the criteria in the Manual on Uniform Traffic Control Devices (MUTCD). The Warrant Report is then submitted to the County for their review and approval.

The previously obtained turning movement volumes will also be utilized to analyze the operation of the intersection in iterative Highway Capacity Software (HCS) runs and analysis using Synchro and SimTraffic. The capacity will be maximized and phasing recommendations will be made. Depending on the results of these analyses, separate timing plans will be prepared for AM and PM conditions provided, as well as off-peak and school peak timing, as necessary.

PHASE 3 TRAFFIC SIGNAL DESIGN

Once the analyses are performed, and the phasing patterns are set, a Traffic Signal Layout Plan will be prepared. The Traffic Signal Layout Plan will be prepared for depicting proposed signal layout, pavement markings, channelization, signing, and parking restrictions. The signal plan will be prepared in accordance with the 2009 edition of the Manual on Uniform Traffic Control Devices (MUTCD).



John Morgan, Director
City of Hoboken
August 3, 2016
Page 4 of 11

Once the Traffic Signal Layout Plan is finalized, the electrical plan will be designed in accordance with the NJDOT Design Manual and Hudson County Guidelines. This plan typically includes junction box locations, conduit layout, controller location, electrical wiring and construction notes.

Once the traffic signal design and analysis is complete, the traffic signal timing directive will be prepared on an 8 ½" x 11" sheet that will be submitted to the County as a hard copy and a Microsoft Word Document. The timing can also be included on the plan if desired.

PHASE 4 CONSTRUCTION PLANS

Maser Consulting will prepare a Construction, Signing and Striping Plan for the intersection. It is not anticipated that any widening or geometric improvements will be needed to safely accommodate a new traffic signal at this location. However, these plans will include curb installation at the corners where needed, ADA compliant handicap ramps, and milling/paving (no grade changes are anticipated). The ADA compliant handicap ramps design will include detailed grading for each ramp.

The signing and striping design will conform to the 2009 Edition of the Manual on Uniform Traffic Control Devices (MUTCD) and City design guidelines. All existing traffic signs will be replaced on the project and the proposed signs used in the design will take into account the appropriate sizes and retro-reflectivity as specified in the MUTCD.

It is anticipated that the NJDOT Standard Maintenance and Protection of Traffic Details will be referenced for this design and no site specific details or schemes will be necessary.

PHASE 5 BID DOCUMENTS

Upon completion and approval of the plans by the County, Construction Quantities will be calculated and included as "To Be Constructed" boxes on the plan sheets. An Engineer's Estimate will be provided to the City and the County. The construction specifications will conform to the 2007 NJDOT Standard Specifications for Road and Bridge Construction. Supplemental specifications will be prepared for any non-standard equipment. Non-standard details will also be included as needed. The Final Bid Set will be prepared and will be suitable for public bid.



John Morgan, Director
City of Hoboken
August 3, 2016
Page 5 of 11

SCHEDULE OF FEES

For your convenience, we have broken down the total estimated cost of the project into the categories identified within the scope of services.

PHASE 1.0	FIELD SURVEY AND BASEMAPPING	\$ 2,800.00
PHASE 2.0	TRAFFIC ANALYSIS	\$ 800.00
PHASE 3.0	TRAFFIC SIGNAL DESIGN	\$ 7,700.00
PHASE 4.0	CONSTRUCTION PLANS	\$ 5,400.00
PHASE 5.0	BID DOCUMENTS	INCL
TOTAL FEE		\$16,700.00
ADDITIONAL FEES (IF REQUIRED)		AS SPECIFIED
MEETINGS/HEARINGS/ADDITIONAL SERVICES		
Planning/Zoning Board Meetings		Hourly
Agency/Coordination Meetings		Hourly
Exhibits/Renderings/Meeting Preparation		Hourly

This Contract and Fee Schedule are based upon the acceptance of Petry Engineering's Business Terms and Conditions contained in Section II of this Contract. Delivery, printing and reproduction, overnight mail service and postage costs are not included in the lump sum fees and will be added to each monthly invoice.

EXCLUSIONS AND UNDERSTANDINGS

Services relating to the following items are not anticipated for the project or cannot be quantified at this time. Therefore, any service associated with the following items is specifically excluded from the scope of professional services within this agreement:

- Services not specifically outlined above in Section I;
- Meetings;
- Bid Assistance;
- Construction Administration, Construction Inspections, Construction Stake-Out, etc.;
- Post construction signal services, ordinance or certification preparation;
- Storm water Design;
- Permitting;
- Geotechnical and Structural Design;
- Intersection Lighting Design;

Petry Traffic and Transportation Engineering
155 Passaic Avenue, Fairfield, New Jersey 07004
973-227-7005



John Morgan, Director
City of Hoboken
August 3, 2016
Page 6 of 11

- Roadway Widening or Geometric Revisions;
- Changes or revisions beyond our control or changes in basic concept after design service has been accomplished;
- Substantial plan revisions, changes, or preparation of additional design support requested by regulatory agencies during the course of project review.

If an item listed herein, or otherwise not specifically mentioned within this agreement, is deemed necessary Petry Traffic may prepare an addendum to this agreement for your review, outlining the scope of additional services and associated professional fees with regard to the extra services.

No extra work will be performed without authorization from the City.

If you find this proposal acceptable, please forward a copy of the Resolution of Approval for this proposal to this office. This will constitute approval of the proposed work. We thank you very much for the opportunity to offer our services and look forward to working with you on this and future projects. In the meantime, should you have any questions regarding this proposal, please feel free to contact me.



SECTION II – BUSINESS TERMS AND CONDITIONS

Petry Traffic LLC agrees to provide professional services under the following terms and conditions:

The term Client referenced herein is the person, persons, corporation, partnership, or organization referenced in the proposal between Petry Traffic LLC and said Client.

1.0 SCOPE OF SERVICES:

Services not set forth in the Scope of Services, are excluded from the Scope of Services, and Petry Traffic LLC will assume no responsibility to perform such services under the base contract. In situations where a written contract is not executed or where additional services becomes necessary during the course of the project, Petry Traffic LLC may provide such services using our Technical Staff Hourly Rate Schedule in effect at the time of services. The hourly rates listed in our Technical Staff Hourly Rate Schedule are adjusted semi-annually and the Client shall be billed at the rates that are in effect at the time of service.

Since there are substantial costs to stop and restart a project once it is underway, should a project's progress be halted at any time by the client, for any reason, Petry Traffic LLC reserves the right to charge a restart fee and/or to renegotiate the remaining fees within the contract.

These Business Terms and Conditions are applicable for any additional professional services rendered for this project including, but not limited to, change orders, client service authorization forms, etc.

2.0 STANDARD OF CARE:

In performing services, we agree to exercise professional judgment, made on the basis of the information available to us, and to use the same degree of care and skill ordinarily exercised in similar circumstances and conditions by reputable consultants performing comparable services in the same locality. This standard of care shall be judged as of the time the services are rendered, and not according to later standards. Reasonable people may disagree on matters involving professional judgment and, accordingly, a difference of opinion on a question of professional judgment shall not excuse a Client from paying for services rendered. **NO OTHER REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IS MADE.**

3.0 INVOICES:

Petry Traffic LLC bills its Clients on a monthly basis using a standard invoice format. This format provides for a description of services performed and a summary of professional fees, expenses, and other charges. For more detailed invoicing requests, Petry Traffic LLC reserves the right to charge for invoice preparation time by staff members. Monthly invoices will be submitted based upon percentage of services completed and reimbursable expenses. Any comments or discrepancies, relative to invoices shall be submitted in writing within fourteen (14) days or the account will be considered correct.

For professional services billed on an hourly basis, Petry Traffic LLC reserves the right to invoice all overtime services performed by our employees using our Technical Staff Hourly Rate Schedule in effect at the time of services at ONE AND ONE-HALF TIMES our standard hourly rate for those employees.

Expenses incurred for services, equipment, and facilities not furnished by Petry Traffic LLC are charged to the Client at cost plus an up-charge not to exceed 15 percent of the invoice for said services.

Client shall pay Petry Traffic LLC for reimbursable expenses, including, but not limited to, application fees, printing and reproduction, courier and express delivery service, special/overnight mailings, facsimile transmissions, specialized equipment and laboratory charges, and costs of acquiring materials specifically for the Client. Reimbursable charges will be added to each monthly invoice and are part of Client's responsibility.

4.0 PAYMENT:

Petry Traffic LLC bills are payable in full UPON RECEIPT and payment is expected within thirty (30) days. We reserve the right to assess a late charge of 1.5 percent per month for any amounts not paid within 45 days of the billing date. In the event payment is not made according to the terms and conditions herein, the matter may proceed to a collections agency or to an attorney for collection. Client shall be responsible for fees charged by the collections agency and/or attorney's fees incurred to collect the monies owed. Should the matter proceed to court, client shall also be responsible for court costs.

In addition, where payment is not received in accordance with the terms of this contract, Petry Traffic LLC reserves the right to withdraw any applications to federal, state, or local regulatory agencies / boards filed on behalf of the client with the understanding that these applications are the property of Petry Traffic LLC. Petry Traffic LLC will provide you with written notification two (2) weeks prior to taking any action to withdraw an application submitted on behalf of the client. If payment of all outstanding invoices is not received within two (2) weeks of receipt of this letter, Petry Traffic LLC will withdraw all pending applications for the project.

5.0 RETAINER:

~~DELETED~~

6.0 RIGHT OF ENTRY/JOB SITE:

Client will provide for right of entry for Petry Traffic LLC personnel and equipment necessary to complete our services. While Petry Traffic LLC will take all reasonable precautions to minimize any damage to the property, it is understood by the Client that in the normal course of our services some damage may occur, the correction of which is not part of this Agreement.

Client shall furnish or cause to be furnished to Petry Traffic LLC all documents and information known to the Client that relate to the identity, location, quantity, nature or characteristics of any hazardous or toxic substances at, on, or under the site. In addition, the Client will furnish or cause to be furnished such other information on surface and subsurface site conditions required by Petry Traffic LLC for proper performance of its services. Petry Traffic LLC shall be entitled to rely on the accuracy and completeness of Client provided documents and information in performing the services required under this Agreement and Petry Traffic LLC assumes no responsibility or liability for their accuracy or completeness.

Petry Traffic LLC will not direct, supervise, or control the work of Client's contractors or their subcontractors. Petry Traffic LLC shall not have authority over or responsibility for the construction means, methods, techniques, sequences, or procedures and Petry Traffic LLC's services will not include a review or evaluation of the contractors (or subcontractor's) safety precautions, programs or measures.

Petry Traffic LLC shall be responsible only for its activities and that of its employees on any site. Neither the professional activities nor the presence of Petry Traffic LLC or its employees or subcontractors on a site shall imply that Petry Traffic LLC controls the operations of others, nor shall this be construed to be an acceptance by Petry Traffic LLC of any responsibility for jobsite safety.



John Morgan, Director
City of Hoboken
August 3, 2016
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7.0 UTILITIES:

In the execution of our services, Petry Traffic LLC will take reasonable precautions in accordance with the professional standard of care to avoid damage or injury to subterranean structures or utilities. The Client agrees to hold Petry Traffic LLC harmless and defend and indemnify Petry Traffic LLC for any claims or damages to subterranean structures or utilities, which have not been marked-out under the One-Call system or are not shown or are incorrectly shown on the plans furnished.

8.0 TERMINATION OR SUSPENSION OF SERVICES:

Should Client fail to make payments when due or is otherwise in material breach of this Agreement, Petry Traffic LLC at their election may suspend services at any time after PROVIDING WRITTEN NOTICE TO THE CLIENT until payments are brought current. Petry Traffic LLC shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension and the Client agrees to indemnify and hold Petry Traffic LLC harmless from any claim or liability resulting from such suspension.

This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, Petry Traffic LLC shall be paid for service performed to the termination notice date plus reasonable termination expenses.

In the event of termination, or suspension for more than three (3) months, prior to completion of all services contemplated by the Agreement, Petry Traffic LLC may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of Petry Traffic LLC in completing such analyses, records and reports.

9.0 SUBCONTRACTORS:

Petry Traffic LLC prefers that its Clients directly retain other contractors whose services are required in connection with field services for a project (e.g., drillers, analytical laboratories, transporters, etc.), except in unusual circumstances. As a service, we will advise Clients with respect to selecting other such contractors and will assist Clients in coordinating and monitoring their performance. In no event will we assume any liability or responsibility for the work performed by other contractors, or for their failure to perform any work, regardless of whether we hire them directly as subcontractors, or only coordinate and monitor their work. When Petry Traffic LLC does engage a subcontractor on behalf of the Client, the expenses incurred, including rental of special equipment necessary for the work, will be billed as they are incurred, at cost plus an up-charge not to exceed 20 percent of the invoice. By engaging us to perform services, you agree to defend, indemnify and hold Petry Traffic LLC its directors, officers, employees, and other agents harmless from and against any and all claims, losses, liabilities, damages, demands, costs, or judgments arising out of or relating in any way to the performance or non-performance of work by another contractor or subcontractor. In addition, Client agrees to pursue recovery of and assert any claims based upon its loss, expenses and/or damages solely and directly against those contractors or subcontractors. In consideration of such indemnity and waiver, Petry Traffic LLC agrees to assign its rights and/or claims against those contractors or subcontractors pursuant to the contractors' or subcontractors' agreements with Petry Traffic LLC to the Client.

10.0 AGREED REMEDY:

Petry Traffic LLC shall be liable to the Client only for direct damages to the extent caused by Petry Traffic LLC's negligence in the performance of its services. UNDER NO CIRCUMSTANCES SHALL PETRY TRAFFIC LLC BE LIABLE FOR INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES, OR FOR DAMAGES CAUSED BY THE CLIENT'S FAILURE TO PERFORM ITS OBLIGATIONS. With regard to services involving hazardous substances, Petry Traffic LLC has neither created nor contributed to the creation or existence of any actually or potentially hazardous, radioactive, toxic, or otherwise dangerous substance or condition at any site, and its compensation is in no way commensurate with the potential liability that may be associated with a substance or site.

To the fullest extent permitted by law, the total liability, in the aggregate, of Petry Traffic LLC and Petry Traffic LLC's officers, directors, employees, agents and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of in any way related to Petry Traffic LLC's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by Petry Traffic LLC under this Agreement, not including reimbursable expenses and any subconsultant fees rendered on the project.

It is intended by the parties to this Agreement that Petry Traffic LLC's services in connection with the project shall not subject Petry Traffic LLC's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Petry Traffic LLC, a New Jersey corporation, and not against any of Petry Traffic LLC's employees, officers or directors.

11.0 LIABILITY TO THIRD PARTIES:

The Client agrees to be solely responsible for, and to defend, indemnify, and hold Petry Traffic LLC harmless from any and all liabilities, claims, damages and costs (including reasonable attorney's fees and defense costs) by third parties arising out of, or in any way related to, our performance or non-performance of services, except claims for personal injury, death, or personal property damage to the extent caused by the sole negligence, gross negligence or willful misconduct of employees of Petry Traffic LLC.

12.0 INDEMNIFICATION:

Petry Traffic LLC shall maintain, at its own expense, Workers Compensation Insurance, Comprehensive General Liability Insurance and Professional Liability Insurance at all times and will, upon request, furnish insurance certificates to the Client.

To the fullest extent permitted by law, Client shall indemnify, defend and hold harmless Petry Traffic LLC and its agents, officers, directors and employees, subcontracts or consultants (herein for the remainder of this section collectively referred to as Petry Traffic) from and against all claims, damages, losses and expenses, whether direct, indirect or consequential or punitive, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the services of Petry Traffic or any claims against Petry Traffic arising from the acts, omissions or work of others, unless it is proven in a court of competent jurisdiction that Petry Traffic is guilty of negligence, gross negligence, or willful misconduct in connection with the services and such negligence, gross negligence, or willful misconduct was the sole cause of the damages, claims, and liabilities.

Client agrees to defend, indemnify and hold harmless Petry Traffic from and against all claims, damages, losses and expenses, direct or indirect, and consequential damages, including but not limited to fees and charges of attorneys and court, and arbitration costs, brought by any person or entity, or claims against Petry Traffic which arise out of, are related to, or are based upon, the actual or threatened dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemical, radioactive materials, liquids, gases, or any other material, upon it or into the surface or subsurface soil, water or watercourse, objects, or any tangible or intangible matter.

Petry Traffic and Transportation Engineering
155 Passaic Avenue, Fairfield, New Jersey 07004
973-227-7005



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To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence breach of warranty or contract, or strict liability of Petry Traffic LLC. This indemnification shall not apply to claims, damages, losses, or expenses which are determined by a court of competent jurisdiction to be the sole result of negligence or willful misconduct by Petry Traffic LLC of obligations under this Agreement.

13.0 ASSIGNS:

The Client may not delegate, assign, sublet, or transfer his duties or interest in the Agreement without written consent of Petry Traffic LLC. Petry Traffic LLC shall not, in connection with any such assignment by the Client, be required to execute any documents that in any way might, in the sole judgment of Petry Traffic LLC, increase Petry Traffic LLC's contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance.

The Agreement shall not create any rights or benefits to parties other than the Client and Petry Traffic LLC, and nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Petry Traffic LLC. Petry Traffic LLC's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against Petry Traffic LLC because of this Agreement of Petry Traffic LLC's performance or nonperformance of services hereunder.

14.0 OWNERSHIP AND RESTRICTION ON REUSE OF DOCUMENTS:

All drawings, calculations, reports, plans, specifications, computer files, field data, notes, and other documents and instruments ("Documents") prepared by Petry Traffic LLC are and remain the property of Petry Traffic LLC as instruments of service. The Documents may not be copied by the Client or others on extensions of this project or on any other project. The Client agrees not to use Petry Traffic LLC's Documents for marketing purposes, for projects other than the project for which the Documents were prepared by Petry Traffic LLC, or for future modifications to this project, without Petry Traffic LLC's express written permission. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by Petry Traffic LLC will be at the Client's sole risk and without liability to Petry Traffic LLC or its employees, subsidiaries, independent professional associates, sub consultants, and subcontractors. The Client shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Petry Traffic LLC from and against any and all expenses, fees, demands, liabilities, suits, actions, claims, damages or losses including attorneys' fees and costs, arising out of or resulting from such unauthorized distribution or reuse of Documents.

Computer files are not considered part of deliverables unless specifically requested or required by the signed contract. If computer files are required, Petry Traffic LLC shall provide Client files subject to the following conditions:

The Client must execute our standard Electronic Media Release form prior to any distribution of files. The Client recognizes that data, plans, specifications, reports, documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration, either intentional or unintentional due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, it is understood that electronic files provided to the Client are for informational purposes only and are not intended as an end-product. Petry Traffic LLC makes no representation of any warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, the Client agrees to waive any and all claims against Petry Traffic LLC and Petry Traffic LLC's consultants relating in any way to the unauthorized use, reuse or alteration of the electronic documents. Any unlicensed use or reuse of the documents without our written consent will constitute a violation of our copyright. Only original plans and reports of the most recent date bearing the signature and the embossed seal of the professional will be considered documents of record.

Petry Traffic LLC, shall maintain in its storage facility, samples collected as part of their services provided for a period of three (3) months after issuance of final reports. After the three (3) month time limit, all samples will be disposed of in accordance with appropriate regulations at the time. Extended storage of samples can be arranged at an additional cost to be established on a project by project basis.

15.0 GENERAL CONDITIONS:

Petry Traffic LLC shall not be responsible for the delays caused by factors beyond its reasonable control, including but not limited to delay due to accidents, an act of God, fire, hurricane, flood, explosions, strike, boycott or other labor dispute, failure of the Client to furnish timely information or approve or disapprove of Petry Traffic LLC's services or work product, delays caused by faulty performance by the Client or contractors of any level, or by acts of Government, which, in the opinion of Petry Traffic LLC, could not have been reasonably foreseen and provided for, such delay will entitle Petry Traffic LLC to an extension of time in performing its Services. If there is any increase in the total cost of providing Services by reason of any such delay, Petry Traffic LLC will notify Client of particulars, and Client will pay for such increase. When such delays beyond Petry Traffic LLC's reasonable control occur, the Client agrees that Petry Traffic LLC shall not be responsible for damages, nor shall Petry Traffic LLC be deemed in default of this Agreement.

The fees quoted in this proposal assume that upon authorization, this project will commence through to completion without a stop work order from the Client. Should a stop work order be received from the Client before completion of the project or any task, additional fees may be required to restart the project.

16.0 ENTIRE AGREEMENT:

This Agreement comprises the final and complete Agreement between the Client and Petry Traffic LLC. It supersedes all prior or contemporaneous communications, representations, or Agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly, has had the opportunity to have questions explained by independent counsel and is satisfied with the terms and conditions contained herein. Amendments to this Agreement shall not be binding unless made in writing and signed by both the Client and Petry Traffic LLC.

To the extent Client provides its own Agreement and that Agreement conflicts with or is silent with respect to any term or condition expressed herein, these conditions shall prevail and shall be binding upon the parties.



John Morgan, Director
 City of Hoboken
 August 3, 2016
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2016 RATE SCHEDULE
 City of Hoboken, Hudson County, NJ
 RATES ARE EFFECTIVE THROUGH DECEMBER 31, 2016

Our professionals provide consulting services in the following disciplines at the hourly rate listed below:

- | | |
|--|--|
| Engineering Services <ul style="list-style-type: none"> • Civil • Construction Administration • Municipal Services • Structural • Traffic and Transportation • Planning | Other Technical Services <ul style="list-style-type: none"> • Environmental • Regulatory Compliance • Grants • Recreation and Landscape Design • Surveying |
|--|--|

TECHNICAL STAFF RATES

BILLING TITLES	HOURLY RATES
Technical Director/Principal	165.00
Project Manager	150.00
Senior Project Specialist	145.00
Senior Technical Professional	140.00
Project Specialist	140.00
Senior Technical Specialist	135.00
Technical Professional	130.00
Senior Specialist	125.00
Technical Specialist	115.00
Specialist	105.00
Senior Data Technician	95.00
Senior Technical Assistant	80.00
Technical Assistant	70.00
Data Technician	60.00
Survey Crew – 2 Man	185.00
Survey Crew – 1 Man	140.00
Expert	225.00

REIMBURSABLE EXPENSES

General Expenses	Cost + 20%
Travel (Hotel, Airfare, Meals)	Cost
Cost Sub-Consultants/Sub-Contractors	Cost + 20%
Mileage Reimbursement*	0.56 / Per
Mile Plotting	3.50/Each
Computer Mylars / Color Plots	45.00/Each
Photo Copies	0.10/Each
Color Photo Copies	1.50/Each
Document Binding	3.00/Each
Compact Disk CD/DVD	35.00/Each
Exhibit Lamination (24"x36" or larger)	Cost + 20%

* Mileage reimbursement subject to change based upon IRS standard mileage rate

Petry Traffic and Transportation Engineering
 155 Passaic Avenue, Fairfield, New Jersey 07004
 973-227-7005



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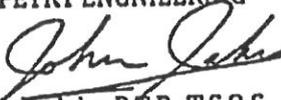
CLIENT CONTRACT AUTHORIZATION

I hereby declare that I am duly authorized to sign binding contractual documents. I also declare that I have read, understand, and accept this contract.

_____	_____
Signature	Date
_____	_____
Printed Name	Title

If you find this proposal acceptable, please sign where indicated above in Section IV, and return one signed copy to this office. Invoices are due within 30 days. This proposal is valid until August 30, 2016

We very much appreciate the opportunity of submitting this proposal and look forward to performing these services for you.

Very truly yours,
PETRY ENGINEERING

John Jahr, P.T.P., T.S.O.S.
Principal
732-236-7557

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Petry Traffic and Transportation Engineering
155 Passaic Avenue, Fairfield, New Jersey 07004
973-227-7005

STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE

DEPARTMENT OF TREASURY/
DIVISION OF REVENUE
PO BOX 252
TRENTON, N J 08646-0252

TAXPAYER NAME:
PETRY TRAFFIC LLC

TRADE NAME:

ADDRESS:
155 PASSAIC AVENUE
FAIRFIELD NJ 07004-3561
EFFECTIVE DATE:

SEQUENCE NUMBER:
2056101

ISSUANCE DATE:
07/06/16

07/06/16

James J. Fusione
Director
New Jersey Division of Revenue

FORM-BRC

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

CONTRACTOR INSTRUCTIONS

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a "fair and open" process (defined at N.J.S.A 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s.2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- Any state, county, or municipal committee of a political party
- Any legislative leadership committee
- Any continuing political committee (a.k.a., political action committee)
- Any candidate committee of a candidate for, or holder of, an elective office:
 - Of the public entity awarding the contract
 - Of that county in which that public entity is located
 - Of another public entity within that county
 - Or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed \$300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

N.J.S.A. 19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- Individuals with an "interest" ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- All principals, partners, officers, or directors of the business entity or their spouses
- Any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filling as continuing political committees, (PAC's).

When the business entity is a natural person, "a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity." [N.J.S.A. 19:44A-20,26(b)] the contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor's responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed cover sheet) may be used as the contractor's submission and is disclose able to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law: NOTE: This section does not apply to Board of Education contracts.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law: NOTE: This section does not apply to Board of Education contracts.

POLITICAL CONTRIBUTION DISCLOSURE FORM

PART II – CITY OF HOBOKEN DISCLOSURE LIST

Entity	Threshold Amount	Time Frame
Candidate of elective municipal office in Hoboken	\$300.00	One year before contract execution through one year after contract completion
Candidate Committee of candidate to elective municipal office in Hoboken	\$300.00	One year before contract execution through one year after contract completion
Joint Candidate Committee of candidates any of whom are running for elective municipal office in Hoboken	\$500.00	One year before contract execution through one year after contract completion
Any individual who currently holds an elective municipal office in Hoboken	\$300.00	One year before contract execution through one year after contract completion
Any Hudson County political Party committee	\$500.00	One year before contract execution through one year after contract completion
Any continuing political committee or political action committee that financially supports Hoboken or Hudson County candidates	\$500.00	One year before contract execution through one year after contract completion
Combined Total of All Contributions Regulated (above)	\$2500.00	One year before contract execution through one year after contract completion

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPURTUNITY LANGUAGE
N.J.S.A 10: 5-31 et seq. (P.L. 1975, C. 127)
N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor or workers' representative of the contractor's commitments under this act and shall post copies of this notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statues

and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading, and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval
- Certificate of Employee Information Report
- Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C 17:27.

Pursuant to New Jersey Executive Order No. 151, of Friday, August 28, 2009 contractors should be advised of the following:

It is the policy of the City of Hoboken that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the City of Hoboken to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the City of Hoboken's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the City of Hoboken's contract with the contractor. Payment may be withheld from a contractor's for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but not limited to:

- 1.) The contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov/JobCentralNJ>
- 2.) The Contractor shall keep specific records of its efforts, including specific numbers of minorities and women
- 3.) The contractor shall actively solicit and shall provide the City of Hoboken with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
- 4.) The Contractor shall provide evidence of efforts described at 2 above to the City of Hoboken no less frequently than once every 12 months.
- 5.) The Contractor shall comply with the requirements set forth at N.J.A.C 17:27

To ensure successful implementation of the Executive Order, state agencies, independent authorities and colleges and universities must forward an Initial Project Workforce Report (AA 201) for any projects funded with ARRA money to the Division of Public Contracts EEO Compliance immediately upon notification of award but prior to execution of the contract.

If you have any questions or require additional information, please contact the Division at 609-292-5473.

EXHIBIT B
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)
N.J.A.C 17:27

CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor or workers' representative of the contractor's commitments under this act and shall post copies of this notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A 10.5-31 et seq, as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C 17:27-7.3; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A,B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by the union which provides evidence, in accordance with standards prescribed by a Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27- 7.3. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended

from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor subcontractor agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.

(B) If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals.

- (1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C 17:27-5.3, of its workforce needs, and request referral of minority and women workers.
- (2) To notify any minority and woman workers who have been listed with it as awaiting available vacancies.
- (3) Prior to commencement of work, to request that the local construction trade union refer minority and woman workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
- (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement and arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;
- (5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statues and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off by the contractor or any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A 10:5-31 et. Seq.;
- (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor.

- I. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral

agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

- II. If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested women or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.
- III. If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or of the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its file, and send a copy to the public agency compliance officer and to the Division

- (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract on forms made available by the Division and submitted promptly to the Division upon request.

- (C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or hiring hall agreement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an official project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women

- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such

information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

Pursuant to New Jersey Executive Order No. 151, of Friday, August 28, 2009 contractors should be advised of the following:

It is the policy of the City of Hoboken that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the City of Hoboken to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the City of Hoboken's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the City of Hoboken's contract with the contractor. Payment may be withheld from a contractor's for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but not limited to:

- 6.) The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov/JobCentralNJ>;
- 7.) The contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including specific numbers of minorities and women.
- 8.) The contractor shall actively solicit and shall provide the City of Hoboken with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electric media; and
- 9.) The Contractor shall provide evidence of efforts described at 2 above to the City of Hoboken no less frequently than once every 12 months
- 10.) The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27

To ensure successful implementation of the Executive Order, state agencies, independent authorities and colleges and universities must forward an Initial Project Workforce Report (AA 201) for any projects funded with ARRA money to the Division of Public Contracts EEO Compliance immediately upon notification of award but prior to execution of the contract.

If you have any questions or require additional information, please contact the Division at 609-292-5473.

TX1

Introduced By: JP

Second By: JAR

**CITY OF HOBOKEN
RESOLUTION NO. _____**

**RESOLUTION AUTHORIZING THE REFUND OF TAX APPEALS
STATE TAX COURT**

WHEREAS, an overpayment of taxes has been made on property listed below; and

WHEREAS, Sharon Curran, Collector of Revenue recommends that the refund be made;

NOW, THEREFORE, BE IT RESOLVED, that a warrant be drawn on the City Treasury
made payable to the following totaling \$973.05

<u>NAME</u>	<u>BL/LOT/UNIT</u>	<u>PROPERTY</u>	<u>YEAR</u>	<u>AMOUNT</u>
BEATTIE PADOVANO LLC 50 CHESTNUT RIDGE ROAD, SUITE 208 P.O. BOX 244 MONTVALE, NJ 07645-0244	203/16	416 WASHINGTON ST	2015	\$973.05

Meeting date: September 7, 2016

APPROVED:
Sharon Curran
Sharon Curran
Tax Collector

APPROVED AS TO FORM:
Brian Aloia
Brian Aloia
Corporation Counsel

Councilperson	Yea	Nay	Abstain/Present	Absent
Ravinder Bhalla	/			
Peter Cunningham	/			
Michael Defusco	/			
James Doyle	/			
Tiffanie Fisher	/			
David Mello	/			
Ruben Ramos Jr.	/			
Michael Russo	/			
President Giattino	/			

A TRUE COPY OF A RESOLUTION ADOPTED BY
THE COUNCIL OF THE CITY OF HOBOKEN, N.J.
AT A MEETING HELD ON

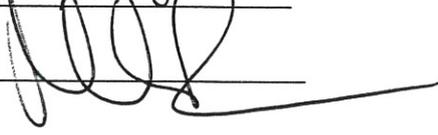
SEP 07 2016

James J. Sarcina

CITY CLERK

CL1

Sponsored by: 

Seconded by: 

City of Hoboken

Resolution No. _____

BE IT RESOLVED, that the attached Meeting Minutes for the City of Hoboken's Regular and Special meeting of the City Council of **June 15, 2016** have been reviewed by the Governing Body, and are hereby approved by the Governing Body, and said Meeting Minutes shall now be made public, except to the extent said minutes include closed execution session discussions, which shall remain confidential until the need for confidentiality no longer exists, at which point the matters discussed therein will be made available to the public in accordance with applicable law.

Approved as to substance:


City Clerk

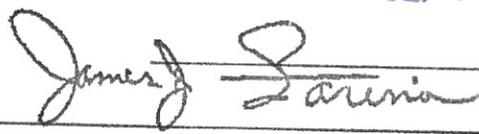
Approved as to form:


Corporation Counsel

Meeting Date: September 7, 2016

Councilperson	Yea	Nay	Abstain/Present	Absent
Ravinder Bhalla	/			
Peter Cunningham	/			
Michael Defusco	/			
James Doyle	/			
Tiffanie Fisher	/			
David Mello	/			
Ruben Ramos Jr.	/			
Michael Russo	/			
President Jen Giattino	/			

A TRUE COPY OF A RESOLUTION ADOPTED BY
THE COUNCIL OF THE CITY OF HOBOKEN, N.J.
AT A MEETING HELD ON: **SEP 07 2016**


CITY CLERK