a written justification for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Grantee's compliance with applicable federal procurement requirements.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

D.17. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.18. Independent Contractor. The parties hereto, in the performance of this Grant Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Grantee, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

D.19. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.

D.20. Force Majeure. The obligations of the parties to this Grant Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.

D.21. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract.

D.22. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.23. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.24. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected

thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.

D.25. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Cindy Hopkins, Program Manager
Department of Military, TEMA
3041 Sidco Drive
Nashville, TN 37204
chopkins@tnema.org
Telephone # (615) 253-3108
FAX # (615) 242-6630

The Grantee:

A C Wharton, Jr., County Mayor
Shelby County
160 N. Main Street, Ste. 850
Memphis, TN 38103
acwharton@shelbycountytn.gov
Telephone # (901) 545-4500
FAX # (901) 545-4759

The Grantee Point of Contact:

Bob Nations, Jr., Director
Shelby County Office of Emergency Preparedness
1075 Mullins Station Rd., Rm. C-133
Memphis, TN 38134
Telephone # (901) 379-7094
FAX # (901) 379-7096

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Grant Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Grant Contract upon written notice to the Grantee. Said termination shall not be deemed a breach of Contract by the State. Upon receipt

of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E. 4. State Interest in Equipment. The Grantee shall take legal title to all equipment and to all motor vehicles, hereinafter referred to as "equipment," purchased totally or in part with funds provided under this Grant Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. "Equipment" shall be defined as an article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds $5,000.00.

As authorized by the provisions of the terms of the Tennessee Uniform Commercial Code — Secured Transaction, found at Title 47, Chapter 9 of the *Tennessee Code Annotated*, and the provisions of the Tennessee Motor Vehicle Title and Registration Law, found at Title 55, Chapter 1 of the *Tennessee Code Annotated*, an intent of this Grant document and the parties hereto is to create and acknowledge a security interest in favor of the State in the equipment and/or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant document. A further intent of this Grant document is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grants between the State and the Grantee.

The Grantee hereto grants the State a security interest in said equipment. This agreement is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Grantee hereby grants the State a security interest in said equipment. The Grantee agrees that the State may file this Grant Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Grantee agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Grant Contract in such form as the State may require to perfect a security interest with respect to said equipment. The Grantee shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Grantee shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment, including replacements and additions thereto. Upon the Grantee's breach of any covenant or agreement contained in this Grant Contract, including the covenants to pay when due all sums secured by this Grant Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Grantee agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Grant Contract. The Grantee shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Grant Contract and shall submit an inventory control report which must include, at a minimum, the following:

a. Description of the equipment;
b. Manufacturer's serial number or other identification number, when applicable;
c. Consecutive inventory equipment tag identification;
d. Acquisition date, cost, and check number;
e. Fund source, State grant number, or other applicable fund source identification;
f. Percentage of state funds applied to the purchase;
g. Location within the Grantee's operations where the equipment is used;

h. Condition of the property or disposition date if Grantee no longer has possession;
i. Depreciation method, if applicable; and
j. Monthly depreciation amount, if applicable.

The Grantee shall tag equipment with an identification number which is cross referenced to the equipment item on the inventory control report. The Grantee shall inventory equipment annually. The Grantee must compare the results of the inventory with the inventory control report and investigate any differences. The Grantee must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Grantee shall submit its inventory control report of all equipment purchased with funding through this grant within forty-five (45) days of the Grant Contract end date and in form and substance acceptable to the State. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Grantee shall notify the State, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Grantee shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

Upon termination of the Grant Contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant Contract, the Grantee shall request written approval from the State for any proposed disposition of equipment purchased with Grant funds. All equipment shall be disposed of in such a manner as parties may agree from among alternatives approved by Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.

E. 5. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Grantee by the State or acquired by the Grantee on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Grantee to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Grantee will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Grantee exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Grantee's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Grantee of this Grant Contract; previously possessed by the Grantee without written obligations to the State to protect it; acquired by the Grantee without written restrictions against disclosure from a third party which, to the Grantee's knowledge, is free to disclose the information; independently developed by the Grantee without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Grant Contract.

E.6. Work Papers Subject to Review. The Grantee shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Grant Contract.

E.7. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Grantee shall prohibit

smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Grant Contract.

E.8. Compliance With Title VI of the Civil Rights Act of 1964. The Grantee agrees to comply with the provisions contained in Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d), and any federal regulations specific to the funding of this grant. The Grantee further agrees to complete and return a self-compliance report as provided by the Grantor.

E.9. Certification Regarding Drug-Free Workplace Requirements. This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 28 CFR Part 67, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment, (See 28 CFR Part 67, Subpart C 13.300 and Subpart D 13.400).

The grantee certifies that it will 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 a 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 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 (E.9.a.);

d. Notifying the employee in the statement required by paragraph (E.9.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 of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

e. Notifying the agency within ten days after receiving notice under subparagraph [E.9.d.(2)], from an employee or otherwise receiving actual notice of such conviction;

f. Taking one of the following actions, within 30 days of receiving notice under subparagraph [E.9.d.(2)], with respect to any employee who is convicted.
   (1) Taking appropriate personnel action against such an employee, up to and including termination; 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 (E.9.a.), (E.9.b.), (E.9.c.), (E.9.d.), (E.9.e.), (E.9.f.), and (E.9.g.).

E.10. Compliance With National Incident Management System (NIMS).
The Grantee will be in compliance with NIMS Standards established by the U.S. Department of Homeland Security and the Federal Emergency Management Agency authorized by Homeland Security Presidential Directive 08 (HSPD-08). The Grantee agrees that it has met NIMS compliance standards. The Grantee further agrees to complete within the announced suspense date the National Incident Management System Compliance Assistance Support Tool (NIMSCAST) report or provide any Correction Action Plan report for items not meeting compliance. The report and any suspense dates are provided by NIMSCAST at http://www.fema.gov/nimscast/index.jsp. The compliance items are in the Resources box under Metrics/Legacy Assessment (pdf). The Grantee will use the current year and the NIMS Implementation Matrix for Tribal and Local Jurisdictions.

IN WITNESS WHEREOF:

SHELBY COUNTY:

_____

A C WHARTON, JR. **DATE**

A C WHARTON, JR., COUNTY MAYOR

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

DEPARTMENT OF MILITARY:

_____

GUS L. HARGETT, JR. **DATE**
MAJOR GENERAL
THE ADJUTANT GENERAL

APPROVED:

_____

M. D. GOETZ, JR., COMMISSIONER **DATE**
DEPARTMENT OF FINANCE AND ADMINISTRATION

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY DATE

I Certify that this Entity Meets
Civil Rights Title VI Compliance

Signature

Date
Reviewed by Department of Military Civil Rights Title VI Officer

ATTACHMENT 1

GRANT BUDGET

(BUDGET PAGE 1)

SHELBY COUNTY

FY 2007 STATE HOMELAND SECURITY GRANT PROGRAM - MMRS

APPLICABLE PERIOD: The grant budget line-item amounts below shall be applicable only to expense incurred during the period beginning JULY 1, 2007, and ending APRIL 30, 2010.

POLICY 03 Object Line-item Reference	EXPENSE OBJECT LINE-ITEM CATEGORY [1] (detail schedule(s) attached as applicable)	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
1 & 2	Salaries and Benefits & Taxes	0.00	0.00	0.00
4, 15	Professional Fee/ Grant & Award [2]	258,145.25	0.00	258,145.25
5, 6, 7, 8, 9, 10, 11 & 12	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications, and Travel/ Conferences & Meetings	0.00	0.00	0.00
13	Interest [2]	0.00	0.00	0.00
14	Insurance	0.00	0.00	0.00
16	Specific Assistance To Individuals	0.00	0.00	0.00
17	Depreciation [2]	0.00	0.00	0.00
18	Other Non-Personnel [2]	0.00	0.00	0.00
20	Capital Purchase [2]	0.00	0.00	0.00
22	Indirect Cost	0.00	0.00	0.00
24	In-Kind Expense	0.00	0.00	0.00
25	**GRAND TOTAL**	**258,145.25**	**0.00**	**258,145.25**

[1] Each expense object line-item shall be defined by the Department of Finance and Administration Policy 03, *Uniform Reporting Requirements and Cost Allocation Plans for Subrecipients of Federal and State Grant Monies, Appendix A.* (posted on the Internet at: www.state.tn.us/finance/rds/ocr/policy03.pdf).

[2] Applicable detail attached if line-item is funded.

ATTACHMENT 1 (continued)

GRANT BUDGET LINE-ITEM DETAIL

(BUDGET PAGE 2)

PROFESSIONAL FEE/ GRANT & AWARD	AMOUNT
FUNDING OF TRAINING, EXERCISES, PLANNING, MANAGEMENT & ADMINISTRATION AND EQUIPMENT PURCHASES ALLOWABLE UNDER THE FY 2007 HOMELAND SECURITY GRANT PROGRAM	258,145.25
TOTAL	**258,145.25**