

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT
REGARDING DIESEL EMISSION REDUCTIONS**

THIS INTERGOVERNMENTAL AGREEMENT is between each of the City of Portland, a municipal corporation duly incorporated under the laws of the State of Oregon, ("Portland"), and the City of Salem, a municipal corporation duly incorporated under the laws of the State of Oregon, ("Salem") hereinafter referred to as the "Jurisdictions." This Intergovernmental Agreement is made pursuant to ORS 190.003 to ORS 190.110, the general laws and constitution of the State of Oregon, and the laws and charters of the Jurisdictions.

1. GENERAL PURPOSES. Portland applied for and was awarded a \$1,622,348 grant for the "Portland Clean Diesel Partnership" from the U.S. Environmental Protection Agency (EPA), Region 10, from the American Recovery and Reinvestment Act Funding for the National Clean Diesel Funding Assistance Program for diesel emission and idle reduction retrofits, (ARRA Grant). Of the total ARRA grant award, \$255,000 will be expended to benefit Salem under this project. The successful implementation of the project involves a partnership between Portland and Salem. The EPA will provide the full funding amount, requiring no local matching funds from either Jurisdiction.

The grant funds that will be provided to Portland arise under the American Recovery and Reinvestment Act of 2009 (the "ARRA" or "Recovery Act".) General guidelines for compliance with some of the ARRA requirements are set forth in 2 CFR Part 176. However, the grant documents from the EPA contain specific reporting requirements, as well as some greater details on other aspects of ARRA compliance. Due to the nature of the ARRA grant funding, the EPA's grant documents will control over all terms and conditions established under this Intergovernmental Agreement

The project involves purchasing and installing verified emission technologies on the diesel fleet of Portland and Salem (collectively referred to herein as the "Jurisdictions"). As the primary recipient of the federal grant, Portland will ultimately be responsible for compliance with grant requirements. Salem must cooperate with Portland to provide timely information and access to the installed diesel equipment in order to assure compliance with grant conditions.

To further the public interest, the Jurisdictions desire to clarify roles and responsibilities related to ongoing activities of the Diesel Emissions Reduction projects.

2. DEFINITIONS.

- A. "ARRA" means American Recovery and Reinvestment Act of 2009, Public Law 111-5, as amended.
- B. "ARRA funds" means the financial assistance provided under this Intergovernmental Agreement pursuant to funding provided by the EPA through ARRA.
- C. "The project" means the diesel emission and idle reduction projects for the City of Portland and the City of Salem.
- D. "Jurisdictions" means the parties participating in the project, the City of Portland and City of Salem.
- E. "Lead office" means Bureau of Planning and Sustainability for the City of Portland and Fleet Services Division for the City of Salem.
- F. "Vendor" means selected proposer or proposers to provide diesel emission and idle reduction devices and installation services.

3. Responsibilities for Grant Administration and Management.

- G. Portland has solicited bids through a request for proposals to provide diesel emission devices and installation services. The request for proposals issued by Portland allowed for other Oregon cities to participate as permissive procurement. Portland has awarded price agreements with the selected Vendors in a manner consistent with the ARRA Grant agreement from the EPA. Salem has determined to participate in the cooperative purchasing aspects of the Portland RFP for clean diesel project. Portland will coordinate all retrofits of Portland's fleet, and Salem will coordinate all retrofits of Salem's fleet. From available grant funds, Portland will serve as the pay agent for the retrofit and installation services for Salem. Salem will choose among the selected Vendors for installation of qualified diesel emission control devices. After installing the qualified diesel emission control devices upon the Salem's vehicles, the selected Vendors will submit invoices to Salem, which shall remit them to Portland for payment, together with other required documentation. Portland shall not be obligated to distribute any ARRA funds for Salem's benefit if, on or prior to the time all conditions for disbursement of the ARRA funds have been satisfied, there has been a change in the ARRA or in EPA's interpretation so that the project is no longer eligible for the ARRA funding that is the subject of this Intergovernmental Agreement.
- H. Salem agrees to comply with all Federal Reporting requirements addressed in Section 4 below by providing timely data and information required to meet the reporting requirements of Portland's grant agreements with the EPA, including but not limited to, any additional reporting requirements associated with the ARRA. Salem shall make available sufficient hours of staff personnel time required to manage and coordinate all retrofits, meet with selected Vendors to provide information, resolve issues

with regards to Salem's fleet and compile and submit timely information to Portland for submission to the federal government.

4. Responsibilities for Federal Reporting.

- A. Portland will take the lead in reporting to the Federal Government for purposes relating to use of the US EPA grant funds. General guidelines for compliance with federal ARRA Grant requirements are set forth in 2 CFR Part 176. However, there are additional requirements on reporting and other aspects of grant compliance identified in the controlling grant agreements under which the ARRA and other grant funds will be distributed. The Jurisdictions agree that in the event of any discrepancies between this Intergovernmental Agreement and the final grant agreements regarding grant compliance, the requirements of the final grant agreements will control.
- B. Salem shall cooperate with Portland with respect to the reporting requirements under Section 1512 of ARRA. Cooperation shall include providing information requested by Portland or by other authorized federal or Portland authorities related to such reporting requirements. Salem agrees to submit reports to Portland on financial and programmatic progress by the last day of the reporting quarter. Salem shall provide Portland with such financial and programmatic information as may be required by the Federal Government due to amendments or clarifications by federal law or administrative requirement under the grant agreement with the EPA. Reports shall be submitted on a monthly basis, on or before the fifth calendar day of the month. Failure to submit any monthly report by the fifth calendar day shall be deemed a default. If Salem has previously been contacted regarding default and is found to have another monthly period of default, Salem shall be notified in writing that goals are not being met and that Salem has established a pattern of non-achievement of goals. Salem shall have to meet all goals inclusive to the next one-month period.
- C. Quarterly progress reports for each piece of off-road construction equipment retrofitted, includes: equipment identification number, manufacturer, model, manufacture year, equipment type, horsepower, number of hours of engine operation, number of calendar days on site, emission control technology installed, fuel type used, and any problems with the equipment or emission controls. Format and content requirements may be subject to change during the project.
- D. Salem agrees to assist Portland in submitting a final project report to the EPA, to include actual results, including emissions

calculations, in addition to the successes and lessons learned for the entire project and all categories of information required for quarterly reporting in the spreadsheet and narrative questions provided by EPA. This report shall be submitted to Portland's Lead Office within 20 days after the expiration or termination of any Federal assistance Intergovernmental Agreement. Final project report is anticipated to be due to Portland Lead Office no later than Friday October 22, 2010.

5. DIESEL EMISSIONS CONTROL TECHNOLOGY REINSTALLATIONS AND/OR CONTINUED RESUSE. Consistent with local, state and federal property disposition rules, Salem shall, to the extent practicable, reinstall diesel emission technologies (e.g. particulate filters, diesel oxidation catalysts, etc.) purchased with EPA grant funds on other equipment, if the original equipment with the controls is scrapped or not otherwise to be used in the future and the controls remain under warranty and operational. If the original equipment with the controls is sold or leased to another person or entity, the controls will remain on the equipment so they may be used by the new purchaser or lessee.
6. EFFECTIVE DATE. This Intergovernmental Agreement shall become effective upon its adoption by all Jurisdictions.
7. DURATION AND TERMINATION.
 - A. Duration. The duration of this Intergovernmental Agreement shall continue through December 31, 2010, subject to termination as provided below.
 - B. Termination. This Intergovernmental Agreement may be terminated by either party without cause upon giving 90 days written notice of intent to terminate. This Intergovernmental Agreement may be terminated with less than 90 days notice if a party is in default of the terms of this Intergovernmental Agreement. In the case of a default, the party alleging the default shall give the other party at least 30 days written notice of the alleged default, with opportunity to cure within the 30 day period. The Jurisdictions may terminate this Intergovernmental Agreement at any time by mutual agreement of all Jurisdictions. In the event of early termination or expiration of the term of this Intergovernmental Agreement, any pre-existing obligations of the Jurisdictions, including reporting and ARRA-related compliance requirements shall survive termination of this Intergovernmental Agreement and will be controlled and performed in accordance with the terms and conditions of this Intergovernmental Agreement.
8. NOTICE. Any notice provided under this agreement shall be sufficient if in writing and: (1) delivered personally; (2) deposited in the United States mail, postage prepaid, first class; (3) sent by courier; or, (4) transmitted

by facsimile, addressed as follows, or to such other address as the receiving party specifies in writing:

For Portland:

Michele Crim
Bureau of Planning and Sustainability
721 NW 9th Ave, STE 350
Portland, OR 97209
Phone: 503.823.5638
Fax: 503.823.5311
mcrim@ci.portland.or.us

For Salem:

Donald Thomson
Fleet Services Division
1455 22d Street SE Bldg 3
Salem, OR 97302
Phone: 503-588-6322
Fax: 503-588-6408
dthomson@cityofsalem.net

9. GENERAL TERMS.

- A. Integration. This Intergovernmental Agreement constitutes the entire agreement between the Jurisdictions. This Intergovernmental Agreement may be modified or amended only by the written agreement of the Jurisdictions.
- B. Severability. The terms of this Intergovernmental Agreement are severable and a determination by any Court or agency having jurisdiction over the subject matter of this Intergovernmental Agreement that results in the invalidity of any part, shall not affect the remainder of this Intergovernmental Agreement.
- C. Interpretation. The terms and provisions of this Intergovernmental Agreement shall be liberally construed in accordance with its general purposes.
- E. Amendments. The terms of this Intergovernmental Agreement shall not be amended without the written authorization of the governing bodies of the Jurisdictions.
- F. 1. Indemnification. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, each Jurisdiction shall indemnify, defend and hold harmless the other party from and against all liability, loss and costs arising out of or resulting from the negligent or intentional wrongful acts of that party, its officers, employees and agents in the performance of this Intergovernmental Agreement.
2. The Jurisdictions acknowledge that the each party shall bear sole responsibility for selection of diesel emission and idle reduction devices. Each party shall be solely responsible for the ongoing and proper maintenance and cleaning of diesel emission and idle reduction devices installed on their respective fleets, as recommended by the equipment manufacturer. Neither Jurisdiction is providing any warranties, express or implied, or assurances to the other party regarding the diesel emission and idle reduction devices.

3. Each party shall be solely liable for its breach of the conditions of any ARRA-related requirements that are its obligation to perform under this Intergovernmental Agreement. Salem's breach of conditions that causes or requires Portland to return to the EPA any ARRA funds disbursed for Salem's benefit hereunder, Salem will hold harmless and indemnify Portland for an amount equal to such ARRA money which Portland is required to pay the EPA. Portland's breach of conditions that causes or requires Salem to return to the EPA any ARRA funds disbursed for Portland's benefit hereunder, Portland will hold harmless and indemnify Salem for an amount equal to such ARRA money which Salem is required to pay the EPA.
- G. Insurance. Each Jurisdiction shall be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.
- H. Adherence To Law. Each party shall comply with all federal, state and local laws and ordinances applicable to this Intergovernmental Agreement.
- I. Non-Discrimination. Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
- J. Access To Records. Each party shall have access to the books, documents and other records of the other which are related to this Intergovernmental Agreement for the purpose of examination, copying and audit, unless otherwise limited by law.
- K. Subcontracts And Assignment. Neither party will subcontract or assign any part of this Intergovernmental Agreement without the written consent of the other party.
- L. Compliance with Laws. Portland and Salem will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority (as they may be amended from time to time) that relate to the project. In particular, but without limitation, Portland and Salem shall comply with the following provisions, as applicable: American Recovery and Reinvestment Act of 2009, Public Law 111-5, as amended; and, U.S. Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" implementing the Single Audit Act of 1996 ("Circular A-133") and Section .102 of Oregon Accounting Manual 04 03 00.P0 (effective June 1, 1998). Salem shall identify, and shall cause all its subcontractors to identify, on the Schedule of Expenditures of Federal Awards ("SEFA") required by OMB Circular A-133, information to specifically identify expenditures made under A (i.e., the federal award number, the CFDA number, inclusion of the prefix "ARRAS-" in identifying the name of the federal program, and the amount of the ARRA money). The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is "[Fill-In Title], [Fill-In Title]".

M. ARRA Acknowledgements, Representations and Covenants

1. ARRA Compliance. As a condition of receiving ARRA funds under this Intergovernmental Agreement, supplemental terms and conditions will apply to the work performed and funded under this Intergovernmental Agreement. Salem must comply with the requirements of the ARRA applicable to the work and services provided under this Intergovernmental Agreement. In the event of any variance between the terms and conditions of this Intergovernmental Agreement and the requirements of compliance with ARRA and applicable federal administrative regulations promulgated under the Recovery Act, the terms and conditions of the federal requirements and ARRA provisions shall control. A copy of the grant agreement between the U.S. Environmental Protection Agency and Portland, together with the accompany project narrative, summarizing the project as proposed by Portland in applying for the grant, are attached as Exhibit 1 to this Intergovernmental Agreement.

2. Buy American. Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA), prohibits the use of funds appropriated for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States (the "Buy American Requirement"). Federal regulations implementing the Buy American Requirement may be found in the Federal Register, Vol. 74, No. 77 (April 23, 2009), 2 CFR Part 176, § 176.60, et seq.

3. Prevailing Wages. Section 1606 of the Recovery Act requires that all laborers and mechanics employed by Contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA must be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code, as implemented by the Office of Management and Budget, Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards, 74 Fed Reg 18449, 18643 (April 23, 2009). Contractors or subcontractors that disregard their obligations to employees, or to have committed aggravated or willful violations while performing work on Davis-Bacon covered projects, may be subject to contract termination and debarment from future contracts for up to three years. In addition, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and liquidated damages that result from violations of the Davis Bacon requirement. Contractors and subcontractors may challenge determinations of violations and debarment before an Administrative Law Judge (ALJ). Contractors and subcontractors may appeal decisions by ALJ's with

the Department of Labor's Administrative Review Board. Final Board determinations on violations may be appealed to and are enforceable through the federal courts. Falsification of certified payroll records or the required kickback of wages may subject the parties to this Intergovernmental Agreement to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.

4. False Claims. Salem shall promptly refer to Portland for transmission to the EPA or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subcontractor or other person has submitted a false claim under the federal False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

5. Other Funds. Salem will secure from other sources the funds necessary to pay for all of its costs associated with the project not otherwise covered by the ARRA funds.

6. DUNS Number. Salem must obtain and provide a Data Universal Numbering System (DUNS) number to Portland for the purposes of ARRA reporting compliance.

7. Contract Provision regarding Reporting. Any of Salem's contracts funded in whole or in part with ARRA funds under or through this Contract must contain a special contract condition requiring the contractor to comply with the reporting requirements established for ARRA funding.

8. ARRA Whistleblower Protection. Salem and Portland agree that neither shall discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, made to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a Portland or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency or their representative, information that the employee reasonably believes is evidence of:

- gross mismanagement of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Section 153 of the Recovery Act requires that Salem and Portland, as a non-federal employers receiving ARRA funds, must post a notice of ARRA Whistleblower rights and remedies at all Recovery Act job sites. A copy of the notice may be obtained from the federal recovery.gov website:

<http://www.recovery.gov/sites/default/files/Whistleblower+Poster.pdf>

Salem and Portland shall include the substance of this requirement in any subcontracts that it issues funded in whole or in part by ARRA funding.

9. Future ARRA Requirements. Salem acknowledges that as of the effective date of this Intergovernmental Agreement the federal government has not issued final guidance on all of the ARRA requirements, that may be applicable to the ARRA funds benefitting Salem under this Intergovernmental Agreement. Salem and Portland agree that they will comply with all such future requirements provided to Salem by Portland.

10. ARRA Publicity. Any publicity regarding this project shall indicate, as may be appropriate, that funding was made possible by a grant from the federal government through ARRA appropriated funds.

11. ARRA Accounts, Records and Inspections:

(a) Accounting. ARRA funds used to support work performed under this Intergovernmental Agreement, in whole or in part may be used in conjunction with other funding sources as necessary to complete projects. However, tracking and reporting on ARRA funds must be separate to meet the reporting requirements of the Recovery Act and OMB Guidance. No part of ARRA funds, as identified by Portland, shall be commingled in deposits or accounts with other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Salem and Portland must segregate the obligations and expenditures related to funding under the Recovery Act. Salem and Portland shall implement and revise their financial and accounting systems as necessary to segregate, track and maintain the ARRA funds apart and separate from other revenue streams. Salem's and Portland's separate, distinct set of accounts, records, documents, and other evidence must show and support: all allowable costs incurred; collections accruing to Salem or Portland in connection with the work under this Intergovernmental Agreement, other applicable credits, negotiated fixed amounts, and fee accruals under this Intergovernmental Agreement; and the receipt, use, and disposition of all Government property coming into the possession of Salem or Portland under this Intergovernmental Agreement. Salem and Portland are each responsible to maintain and may be required to submit backup documentation for all expenditures of funds under the Recovery Act including such items as timecards and invoices.

Salem and Portland will each provide to the other copies of backup documentation at the other party's request.

(b) Inspection and audit of accounts and records. As work performed under this Intergovernmental Agreement will be funded, in whole or in part, with ARRA funds, books of account and records relating to this Intergovernmental Agreement shall be subject to inspection and audit by Portland, Salem, the Federal Government, or their designees at all reasonable times, before and during the period of retention provided for below, in subsection 9.M.(d) below, and the parties shall each afford the other or the Federal Government proper facilities for such inspection and audit.

(c) Disposition of records. Except as agreed upon by the parties, and the Federal Government, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to Salem in connection with the work under this Intergovernmental Agreement, other applicable credits, and fee accruals under this Intergovernmental Agreement, shall be available for inspection by Portland and/or the Federal Government, and shall be delivered to Portland, the Federal Government by Salem either as Portland may from time to time direct during the progress of the work or, in any event, as Portland shall direct upon completion or termination of this Intergovernmental Agreement and final audit of accounts hereunder.

(d) Preservation of Records. Except as otherwise provided in this Intergovernmental Agreement, all other records in the possession of Salem or Portland relating to this Intergovernmental Agreement shall be preserved and retained by Salem and Portland for a period of 6 years after the later of: termination of this Intergovernmental Agreement, receipt of final payment under this Intergovernmental Agreement or otherwise disposed of in such manner as may be agreed upon in writing by Portland and Salem.

(e) Comptroller General, Inspector General.

i. Pursuant to Section 902 of the Recovery Act, the Comptroller General of the United States and his representatives may: 1) examine Salem's and Portland's records or any of its subcontractors, that directly pertain to, and involve transactions relating to this Intergovernmental Agreement or any subcontracts; and, 2) interview any of Salem's or Portland's officers or employees or any of its subcontractors regarding this Intergovernmental Agreement.

ii. Section 1515(a) of the Recovery Act authorizes any representative of the Inspector General of a relevant Federal agency to: (1) examine any of Salem's or Portland's records and any of its subcontractors that pertain to, and involve transactions

relating to this Intergovernmental Agreement or any subcontracts; and, (2) interview any of Salem's or Portland's officers or employees regarding this Intergovernmental Agreement.

N. Default It shall be a condition of default under this Intergovernmental Agreement if Salem or Portland fails to proceed expeditiously with, or to complete, the Project or any segment or phase of the Project in accordance with Subsection 9.M above. If after thirty days notice to Salem or Portland and an opportunity to cure, the default still exists, the non-defaulting party may terminate this Intergovernmental Agreement effective upon written notice to the other party, or at such later date as may be established by the party in such notice. Upon such termination by Portland, Salem will be obligated to return to Portland the amount of any ARRA funds expended for Salem's benefit under this Intergovernmental Agreement.

APPROVED AND EXECUTED by the appropriate officer(s) who are duly authorized to execute this Intergovernmental Agreement on behalf of the governing body of each Jurisdiction.

CITY OF SALEM, OREGON

CITY OF PORTLAND, OREGON

By _____

By _____

Title _____

Title _____

Date: _____

Date: _____

Auditor, City of Portland

Date: _____

Reviewed:

Approved as to form

City Attorney, City of Salem

Portland City Attorney's Office