

INTERGOVERNMENTAL AGREEMENT
PROJECT NAME: Incident Message System

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT" and the City of Portland, a municipal corporation of the State of Oregon, acting by and through its Portland Office of Transportation and its City Officials, hereinafter referred to as "CITY".

RECITALS

1. By the authority granted in ORS 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with the counties and cities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. Grant money provided by the U.S. Department of Homeland Security, Office for Domestic Preparedness is intended for the development and implementation of an emergency messaging system for Weapons of Mass Destruction (WMD) incidents including utilization of the National Emergency Messaging System (NEMS).

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, ODOT wishes to retain the services of CITY to purchase, develop and implement an emergency messaging system hereinafter referred to as "system" for Weapons of Mass Destruction (WMD) incidents including utilization of the National Emergency Messaging System (NEMS) hereinafter referred to as "Project". The purpose of the Project is to automate the exchange of incident information between systems using message broker/switch technology.
2. The U.S. Department of Homeland Security, Office for Domestic Preparedness has awarded a grant to ODOT for Fiscal Year 2003 in the amount of \$400,000, as described in Exhibit B, attached hereto and by this reference made a part hereof. The terms of ODOT's grant require exchange of incident information between ODOT's Advanced Traffic Management System (ATMS) and computer aided dispatch (CAD) systems operated by CITY, The Bureau of Emergency Communication (BOEC) and Oregon State Police (OSP).
3. The work shall begin on the date all required signatures are obtained and shall be completed no later than December 31, 2005, on which date this Agreement automatically terminates unless extended by a fully executed amendment by all parties to this Agreement.

CITY OBLIGATIONS

1. CITY shall procure the system. The system shall meet ODOT's requirements listed in Exhibit A, attached hereto and by this reference made a part hereof.
2. CITY shall present invoices for a portion of actual costs incurred by CITY on behalf of the Project directly to ODOT's Project manager for review and approval. Such invoices shall be in a form identifying the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one month duration, based on actual expenses incurred. Under no conditions shall ODOT's obligations exceed \$400,000, including all expenses.
3. CITY agrees to comply with and be bound by all of the provisions, terms, conditions and requirements of Exhibit B, and to obtain any necessary copies of federal laws and regulations with which it must comply.
4. CITY shall provide ODOT with the proof of purchase, and the purchase amount for each item purchased, through the use of receipts and purchase orders and agrees to only use the funds for the items agreed to.
5. CITY agrees to maintain all equipment and supplies, provided or purchased, in the manner that will most prolong the life and keep it in good working order at all times.
6. CITY's project manager for this project is Carl Simpson, City of Portland, Bureau of Emergency Communications, PO Box 1927, Portland, OR 97207. Phone 503-823-0911. Email: carl@ci.portland.or.us.
7. CITY shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, CITY expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
8. CITY shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.

9. All employers, including CITY, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. CITY shall ensure that each of its subcontractors complies with these requirements.
10. CITY shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this Project.
11. Notwithstanding the foregoing defense obligations under paragraph 10 above, neither CITY nor any attorney engaged by CITY shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that CITY is prohibited from defending the State of Oregon, or that CITY is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against CITY if the State of Oregon elects to assume its own defense.

ODOT OBLIGATIONS

1. In consideration for the services performed, ODOT agrees to pay CITY a maximum amount of \$400,000. Said maximum amount shall include reimbursement for a portion of the cost and expenses incurred in the purchase and implementation of the system.
2. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
3. ODOT's Project Manager for this Project is Galen McGill, 5th Floor Transportation Building, 355 Capitol Street NE, Salem, OR 97301-3871, Phone: 503-986-4486.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both parties.

ODOT may terminate this Agreement effective upon delivery of written notice to CITY, or at such later date as may be established by ODOT, under any of the following conditions:

City/ODOT

Agreement No. 21851

- a. If CITY fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If CITY fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within 20 days or such longer period as ODOT may authorize.
 - c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - d. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.
2. CITY acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
 3. CITY, as a recipient of federal funds, pursuant to this Agreement with ODOT, shall assume sole liability for CITY'S breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, except as limited by the Oregon Constitution and by the Oregon Tort Claims Act, upon CITY'S breach of any such conditions that requires ODOT to return funds to the U.S. Department of Homeland Security, hold harmless and indemnify ODOT for an amount equal to the funds received under this Agreement; or if Oregon Constitution or Oregon Tort Claims Act limitations apply to the indemnification ability of CITY, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
 4. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission.

City of Portland, by and through its Mayor,
Tom Potter, and City Auditor, Gary
Blackmer

By _____

Title _____

Date _____

By _____

Title _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**
APPROVED AS TO FORM

By *Linda Nguyen*
City Legal Counsel
CITY ATTORNEY

Date 4-1-05

City Contact:

STATE OF OREGON, by and through
its Department of Transportation

By _____
Deputy Director, Highway Division

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By _____
ITS Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date: _____

Exhibit A
System Requirements
May 21,2004

- A. ODOT requires that the interoperable data system meets the following requirements:
1. The integration solution shall:
 - a. Support one-to-many and many-to-one message transfer
 - b. Support TCP/IP protocol
 - c. Support requests for data.
 - d. Support a Web Services Architecture.
 - e. Utilize Standardized SOAP Protocol.
 - f. Utilize Standardized Web Services Definition Language (WSDL).
 - g. Utilize Standardized Web Services XML.
 - h. Utilize Standardized Web Services XML Schema Definition (XSD).
 - i. Provide clients with a directory of services that are available.
 - j. Have the capability to modify the directory of services by the solution administrator.
 - k. Have automatic detection and recovery from network failures.
 - l. Be highly available.
 - m. Support user authentication.
 - n. Utilize Standard Web Services Security.
 - o. Log all system errors and alerts.
 - p. Provide a mechanism for monitoring system performance.
 - q. Provide a mechanism for monitoring system utilization.
 - r. Support a scalable architecture that can accommodate growth in the number of clients
 - s. Have a Data Directory to support a directory of agencies that provide data.
 - t. Have a Data Directory to support a directory of agencies that wish to receive data.
 - u. Provide data to subscribers based on message types, City, and priority.
 - v. Support two-way message transmissions that include return receipts/responses.
 - w. Support xml data schema for IEEE 1512-2000 (Common Incident Management Message Sets (IMMS) for use by EMCs)

B. ODOT also requires that the interoperable data system meet the following desirable requirements where feasible:

1. The integration solution shall where practicable:
 - a. Interface to external systems through a firewall.
 - b. Provide an audit trail for modifications made to system configuration.
 - c. Provide a tool that allows customization and configuration of system parameters, such as timeout values and poll intervals.
 - d. Provide data to subscribers based on location.
 - e. Provide an interface that allows requests to subscribe to data.
 - f. Provide a mechanism for an Administrator to track system and message usage for data providers.
 - g. Provide a mechanism for an Administrator to track system and message usage for data subscribers.

C. In addition, ODOT requires that the interoperable data system provides the following CAD data to ODOT for incidents on state highways when the information is available:

- a. Incident ID
- b. Incident Location- including Highway and Milepost when applicable
- c. Incident type
- d. Incident severity
- e. Incident Impact to travel
- f. Highway Lane blockages or closures
- g. Incident responders
- h. Estimated duration of incident
- i. Request for service from ODOT

EXHIBIT B

GRANT AMENDMENT NUMBER 1

Post-It® Fax Note	7671	Date	# of pages → 2
To	Galen	From	Carmen
Co./Dept.		Co.	Merlo
Phone #		Phone #	
Fax #		Fax #	

OMELAND SECURITY
SERVICES DIVISION

STATE HOMELAND SECURITY GRANT PROGRAM

GRANT ADJUSTMENT NOTICE

PROGRAM NAME: National Emergency Message System Demonstration GRANT NO: #03-159

GRANTEE: Oregon Department of Transportation FY 2003 AWARD: \$400,000

ADDRESS: 800 Airport Road SE Salem, OR 97301-4798 AWARD PERIOD: 8/1/03 thru 12/31/05

PROGRAM DIRECTOR: Rose Gentry TELEPHONE: (503) 986-3020
FAX: (503) 986-3032

PROGRAM CONTACT: Galen McGill TELEPHONE: (503) 986-4486
FAX: (503) 986-4063

FISCAL CONTACT: Jesse Moore TELEPHONE: (503) 9864018

AWARD PERIOD AMENDMENT

INCOME:

Federal Grant Funds \$400,000

TOTAL INCOME: \$400,000

EXPENSES:

Equipment \$400,000

TOTAL EXPENSES: \$400,000

Approved by CJSD:

C Merlo —

Carmen Merlo, Director

12.27.04

Date

5/14

GRANT AMENDMENT NUMBER 1

1. **Progress Reports.** The Grantee agrees to submit a semi-annual report on its progress in meeting each of its agreed upon goals and objectives. Reports must be received no later than January 31, 2004; July 31, 2004; January 31, 2005; July 31, 2005; and January 31, 2006. Any progress report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. Grantee must receive prior written approval from CJSD to extend a progress report requirement past its due date.
2. **Financial Reimbursement Reports.**
 - a. In order to receive reimbursement, the Grantee agrees to submit the original signed Request for Reimbursement (RFR) which includes supporting documentation for all grant and match expenditures. RFRs must be received no later than January 31, 2004; July 31, 2004; January 31, 2005; July 31, 2005; and January 31, 2006. Reimbursements for expenses will be withheld if progress reports are not submitted by the specified dates or are incomplete. Any RFR that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. Grantee must receive prior written approval from CJSD to extend an RFR requirement past its due date.
 - b. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred.
 - c. When requesting reimbursement for equipment costing over \$5,000, the Grantee agrees to provide a description of the equipment, purchase price, date of purchase, and identifying numbers if any.
 - d. Reimbursements will only be made for actual expenses incurred during the grant period. The Grantee agrees that no grant funds may be used for expenses incurred before August 1, 2003 or after December 31, 2005.
 - e. Grantee shall be accountable for and shall repay any overpayment, audit disallowances or any other breach of grant that results in a debt owed to the Federal Government. CJSD shall apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129.
3. **Audit Reports.** Grantee shall provide CJSD copies of all audit reports pertaining to this Grant Agreement obtained by Grantee, whether or not the audit is required by OMB Circular A-133.
- F. **Indemnification.** The Grantee shall, to the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon and CJSD, their officers, employees, agents, and members from all claims, suits and actions of whatsoever nature resulting from or arising out of the activities of Grantee, its officers, employees, subcontractors, or agents under this grant.

Grantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security, their officers, employees, agents, and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of subcontractor under or pursuant to this grant.

Grantee shall, if liability insurance is required of any of its contractors or subcontractors, also require such contractors or subcontractors to provide that the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security and their officers, employees and members are Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.
- G. **Copyright and Patents.**
 1. **Copyright.** If this agreement or any program funded by this agreement results in a copyright, the CJSD and the Office of Justice Programs reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes, the work or the copyright to any work developed under this agreement and any rights of copyright to which Grantee, or its contractor or subcontractor, purchases ownership with grant support.

