

## INTERGOVERNMENTAL AGREEMENT

### URBAN AREAS SECURITY INITIATIVE GRANT FUNDS

This Intergovernmental Agreement ("**Agreement**") is between the City of Portland (the "**City**") and the Port of Portland (the "**Port**" or "**Recipient**") and is effective on the date provided under Section 4.

#### Recitals

WHEREAS, the U. S. Department of Homeland Security ("**DHS**") awarded Urban Areas Security Initiative ("**UASI**") Grant No. #06-071, dated October 20, 2006 (the "**2006 Grant**"), via the Criminal Justice Services Division of the Oregon Office of Homeland Security, to the City's Portland Office of Emergency Management ("**POEM**," also referred to the 2006 Grant as "**Grantee**") in the original amount of \$8,240,000. The 2006 Grant was amended by Amendment Number 1 dated August 6, 2007, by Amendment Number 2 dated February 9, 2008, and by Amendment Number 3 dated September 26, 2008, which increased the award amount to \$8,275,475. Copies of the 2006 Grant and such amendments are attached to this Agreement as Exhibit A and are, by this reference, incorporated herein; and

WHEREAS, DHS awarded UASI Grant No. #07-071, dated December 20, 2007 (the "**2007 Grant**"), via the Oregon Military Department, Office of Emergency Management ("**OEM**"), to the City's POEM (referred to in the 2007 Grant as "**Subgrantee**") in the original amount of \$6,789,624. The 2007 Grant was amended by Amendment Number 1 dated January 15, 2008, increasing the award amount to \$6,806,353. Copies of the 2007 Grant and its amendment are attached to this Agreement as Exhibit B and are, by this reference, incorporated herein; and

WHEREAS, the UASI program assists designated urban areas with building sustainable capacity to prevent, protect, respond, and recover from acts of terrorism. Funds made available under the 2006 Grant and the 2007 Grant (collectively, the "**Grants**") are intended to increase the capability of urban areas to prevent and respond to chemical, biological, radiological, nuclear and explosive ("**CBRNE**") events; and

WHEREAS, POEM is the administering agency for UASI grants in the Portland urban area, and as such POEM is required to coordinate the purchase and distribution of specialized equipment, supplies and services to enhance the ability to prevent, deter, respond to and recover from CBRNE events, in some instances to provide for the reimbursement of funds for the same purpose to agencies, jurisdictions, and special districts ("**Recipients**") in the Portland urban area, which includes Multnomah, Clackamas, Columbia and Washington counties in Oregon and Clark County in Washington; and

WHEREAS, after extensive, coordinated discussions between state and local officials, a list of specialized equipment, supplies and professional services to be purchased with Grant funds has been developed which is consistent with DHS UASI goals and objectives; and

WHEREAS, the Port believes that the equipment, supplies, and professional services it desires to purchase with the Grant funds, (the “**Port Projects**”), set forth on the attached Exhibit C, which is, by this reference, incorporated herein, will be determined by OEM to be “qualifying.”

WHEREAS, the Grants obligate recipients of Grant funds to comply with all terms of the Grants, including but not limited to obligations regarding reporting, access to records, and supplanting of funds; and

WHEREAS, the parties are entering into this Agreement under the authority granted in ORS Chapter 190 to provide for the City’s distribution of Grant funds, in compliance with Grant requirements, to the Port as a Recipient, for the Port’s purposes in completing the Port Projects.

### Agreement

1. **Defined Terms.** Capitalized terms not defined in this Agreement will have the meanings given to them in the Grants.

2. **City Obligations.**

a. The City agrees that it will purchase for Recipient’s benefit and distribute to Recipient the equipment, supplies and services which have been approved by the OEM for the Port Projects or, as appropriate, the City may delegate directly to Recipient the authority to: (i) purchase approved equipment, supplies and services for the Port Projects; (ii) utilize specialized training programs; or (iii) train Recipient’s staff to respond to CBRNE events. In the event that the City elects to delegate to Recipient the authority to make approved purchases or expenditures, the City shall reimburse Recipient for qualifying expenses upon presentation of an appropriate invoice together with OEM designated backup materials.

b. By this Agreement the City specifically delegates to Recipient the authority to purchase the equipment, supplies and services identified on Exhibit C relating to the Port Projects, and agrees to reimburse Recipient in the full amount of the Port Projects provided: 1. Recipient follows Federal UASI Contract Procurement Standards; 2. Recipient provides all backup documentation requested by OEM via the Portland Office of Emergency Management; and 3. All reimbursement requests made to the City are approved by both the City and OEM for eligibility. The City agrees to respond to all reimbursement requests (invoices) from the Recipient in a reasonable time after receipt.

3. **Port Obligations.** The Port, as Recipient, agrees as follows:

- a) To timely comply with all reporting obligations required by the Grants’ terms and by the City.
- b) To immediately reimburse the City for any payments for any costs/expenses subsequently deemed to be ineligible by OEM or the Federal government.

- c) To comply with National Incident Management System (“NIMS”) implementation requirements, including but not limited to the timely completion and submittal to the appropriate party of the NIMS Compliance Form set forth at Exhibit D.
- d) To appropriately use and conserve the equipment, supplies and services provided under this Agreement for CBRNE training and response, or otherwise in compliance with the Grant requirements.
- e) That any equipment or services provided by the City to Recipient under this Agreement are only available as specifically described in the lists attached to the Grant documents. If Recipient desires to receive equipment or services from the City differing in any regard from the lists attached to the Grant documents, Recipient shall make that request, in writing, of the City and the City shall pass such request on to the OEM and the City will only make or approve a purchase of the requested item if it is approved for reimbursement, in writing, by the OEM. In no event shall Recipient make requests for equipment or services directly to the OEM.
- f) To comply with the City’s agreement that all publications created with funding under the Grants shall prominently contain the following statement: “This document was prepared under a grant from FEMA’s National Preparedness Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA’s National Preparedness Directorate or the U.S. Department of Homeland Security.”
- g) To maintain and retain accounting and financial records in accordance with Generally Accepted Accounting Principles (“GAAP”) and the standards of the Office of Comptroller set forth in the May 2002 Office of Justice Program Financial Guide, including without limitation in accordance with the Office of Management and Budget Circulars A-87, A-102, A-122, A-128, A-133. All of these documents are to be retained for a minimum of six years after the effective date of the Agreement and made available for review, upon request, to federal, state and City employees or their agents or officers. Review may occur at any reasonable time during Recipient’s normal office hours, even after six years, if the records are still available.
- h) To obtain copies of all federal regulations with which Recipient must comply.
- i) Not to supplant Recipient’s local funds with federal funds and to, instead, use the federal funds available under this Agreement to increase the amount of funds that, in the absence of federal aid, would be made available to Recipient to fund programs within the UASI program grant guidelines.
- j) To provide the City with Progress Reports, Financial Reimbursement Reports and Audit Reports when required by the City and in the form required by the City.

- k) To comply with all the obligations, and be bound by any limitations, applicable to the City as Grantee under the 2006 Grant and as Subgrantee under the 2007 Grant. Subject to the limitations stated in the Oregon Constitution and in the Oregon Tort Claims Act, Recipient will hold harmless, indemnify, and defend the City, its officers, employees and agents from all claims, suits or actions, resulting from or arising out of the activities of Recipient, its officers, directors, employees and agents under this Agreement. By signing this Agreement Recipient represents that its appropriate representatives have read the Grant Award Conditions and Certifications and that Recipient is in agreement therewith.
- l) If at any point during the term of this Agreement Recipient wishes to seek reimbursement for approved specialized training services, including the costs of overtime, backfill and course attendance, to enable Recipient's staff to respond to CBRNE events, Recipient will provide the City with proof of purchase and amount of each item purchased through the use of receipts, purchase orders or other acceptable documentation. Recipient will only use the Grant funds for the items approved for purchase.
- m) For all single items of equipment valued over \$5,000 and having a useful life exceeding one year, Recipient shall account for the items as fixed assets, providing a list to the City and maintaining said list to include date of purchase, description of items including applicable serial numbers, and location of items.
- n) That Recipient will obtain prior approval for all training via the State Domestic Preparedness Training Coordinator at OEM through POEM. This applies to both FEMA-provided training and training which is not provided by FEMA. Recipient, and not the City, must, in the first instance, provide the funds for any such training. Recipient acknowledges that there is a risk, to be borne by Recipient alone, that the OEM may, upon receipt of Recipient's invoice, not authorize reimbursement for the cost of any particular training program purchased directly or utilized by Recipient. In that event, the cost of the training shall be the obligation of Recipient only and shall not be a cost to the City.
- o) To maintain and store all equipment and supplies provided or purchased under this Agreement in the manner that will most prolong the useful life the same and to keep it in good working order at all times during said useful life.
- p) Recipient will label all equipment purchased with Grant funds as follows: **"Purchased with funds provided by the U.S. Department of Homeland Security."** Labels will be proportionate to the object being labeled (i.e. a vehicle label should be of appropriate size and legible, and a label for hand-held radios should be as well; these labels will, of necessity, be of different sizes). Items smaller than hand-held radios do not require labeling.

4. **Effective Date; Duration.** This Agreement shall be effective from the date both parties have signed, and shall continue in effect until the Agreement is terminated under Section 7 below.
5. **Amendment.** This Agreement may only be amended by written agreement of the parties which may require the additional approval of counsel and governing body.
6. **Termination.**
  - a) By the City. In the event that Recipient fails to comply with its obligations under this Agreement the City will notify Recipient, in writing, of the City's intention to terminate this Agreement for cause and the reasons therefore. Recipient shall have fourteen days, or such other time as the parties may agree, from the date of the City's notice, in which to correct the compliance failure. If Recipient does not correct such compliance failure within the fourteen day period or, if correction is not possible within that time period and Recipient has not begun diligent efforts within fourteen days to begin correction of the compliance failure, the City may then terminate this Agreement for cause. If the City terminates this Agreement for cause under this paragraph, Recipient will be liable to the City for any costs or penalties incurred by the City as a result of Recipient's compliance failure, including but not limited to reimbursement of any Grant funds improperly spent or disbursed by Recipient.
  - b) By the Port. The Port may terminate this Agreement for any reason upon 90 days' prior written notice to the City, directed to the then-Director of POEM, subject to: 1) the Port's obligation to immediately reimburse the City for any and all grant funds, penalties or other costs for which the City may be liable to OEM, or any other entity or person, due to the Port's decision to terminate this Agreement; and 2) the Port's continuation with any obligations attached to receipt of grant funds, for funds already received (and items or services purchased therewith,) as required by this Agreement.
7. **Governing Law.** All disputes between the parties shall be resolved under the laws of the State of Oregon and in the courts of Multnomah County unless otherwise agreed, in writing, by the parties.
8. **Entire Agreement.** This Agreement is a complete, integrated agreement that supersedes any prior understandings of any kind between the parties with respect to the subject matter of this Agreement and is the entire agreement between the parties with respect to the subject matter of this Agreement.
9. **Successors in Interest.** The terms of this Agreement shall be binding upon the successors and assigns of each party.
10. **No Separate Entity.** This Agreement does not create a separate entity under ORS Chapter 190.

[Signature page follows]

City:

CITY OF PORTLAND

By: \_\_\_\_\_  
Tom Potter, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Blackmer, Auditor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Carmen Merlo, Director, Portland  
Office of Emergency Management

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

**Port/Recipient:**

PORT OF PORTLAND

By: Bill Wyatt  
Bill Wyatt, Executive Director

Date: 10-30-08

APPROVED AS TO LEGAL SUFFICIENCY FOR THE PORT:

Eric A. [Signature]  
Counsel for the Port of Portland

Date: 10/28/08