

INTERGOVERNMENTAL AGREEMENT

Between

THE CITY OF PORTLAND, OREGON

And

Clackamas County

THIS IS an Intergovernmental Agreement (IGA) between the City of Portland (City) and Clackamas County (County) entered into pursuant to the authority granted in Oregon Revised Statutes (ORS) Chapter 190 for the coordination of activities related to the use of the United States Department of Homeland Security's Urban Areas Security Initiative (UASI) grant program funds for addressing the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, to assist in building an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism.

Recitals

WHEREAS, the United States Department of Homeland Security, Federal Emergency Management Agency (FEMA) Grant Programs Directorate, provided UASI grant funding in the amount of \$6,874,736 in Fiscal Year 2010 to the State of Oregon (State) for distribution to the Portland Urban Area (PUA) and

WHEREAS, the State awarded UASI Grant #10-170 to the City of Portland, Office of Emergency Management (POEM), as Grantee, for Fiscal Year 2010 in the amount of \$6,874,736, a copy of which is attached to this Agreement and incorporated herein as Exhibit A; and

WHEREAS, UASI Grant #10-170 is intended to increase the capabilities of the PUA, which includes jurisdictions in Multnomah, Clackamas, Columbia and Washington counties in Oregon and Clark County in Washington, to build an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism; and

WHEREAS, a list of equipment, supplies, professional services, training and exercise events to be grant funded has been developed through the application process and coordination with the State; and

WHEREAS, POEM, as Grant Administrator, is required to oversee and coordinate the expenditure of the UASI grant funds and has developed procedures to guide the procurement, delivery, and reimbursement processes; and

WHEREAS, POEM, as Grant Administrator, is required to make periodic reports to the State regarding the expenditure of the UASI grant funds and has developed procedures to coordinate the collection and submission of information and documents needed to support the reporting process; and

WHEREAS, the City and all other PUA jurisdictions that receive direct benefit from UASI grant purchases are required to comply with all terms of the U. S Department of Homeland Security, UASI Grant CFDA # 97.008, Grant No. 10-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds; and

WHEREAS, the City has entered into agreements with the PUA counties to secure their commitment to follow the City-developed procurement, delivery, reimbursement, and reporting procedures, to ensure their compliance with all terms of the grants, and to obligate them to coordinate with and obtain similar assurances from directly benefiting jurisdictions within the respective counties.

NOW, THEREFORE, the Parties agree as follows:

1. The City agrees:

- a) That it is authorized to purchase and distribute equipment, supplies and services which have been approved by the State and, as appropriate, the City may delegate this purchasing authority to the County. Such authorization, however, does not guarantee payment for Recipient. The State requires documentation invoicing by Recipient, to the City, and compliance with Recipient's purchasing practices, the City's purchasing practices and any applicable state and federal rules and regulations prior to approval of payments.
- b) When the City has purchased goods or services for the Recipient arrangements for delivery will be made between the parties and the Recipient shall be the owner of said goods or services.

2. The County agrees:

- a) That it has read the award conditions and certifications for grant #10-170, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the City, as grantee, under those grant documents.

- b) To comply with all City and State financial management and procurement requirements, including competitive bid processes, and to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR) and the Office of Management and Budget (OMB) Circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:
- i. Administrative Requirements: 44 CFR Part 13 (State and Local Governments) and 2 CFR Part 215 (Non-Profit Organizations).
 - ii. Cost Principles: 2 CFR Part 225 (State, Local, and Tribal Governments); Part 230 (Non-Profit Organizations); and Federal Acquisition Regulations (FAR) Part 31.2 (Contracts with Commercial Organizations).
 - iii. Audit Requirements: OMB Circular A-133.
- c) That all equipment, supplies, and services provided by the City are as described in the approved grant budget documents.
- d) That regardless of how it is procured, all equipment and supplies purchased shall be owned by the Recipient until disposition takes place. The Recipient shall be responsible for inventory tracking, maintenance and storage while in possession of such equipment and supplies.
- e) To comply with all property and equipment tracking and monitoring processes required by the grants, this Agreement, the City and the State. To treat all single items of equipment valued over \$5,000 as fixed assets and to provide the City with a list of such equipment. The list should include, but is not limited to, dates of purchase, equipment description, serial numbers, and locations where the equipment is housed or stored. All requirements for the tracking and monitoring of fixed assets are set forth in 44 CFR Part 13. The Recipient shall maintain and store 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.
- f) That any request or invoice it submits for reimbursement of costs is consistent with the items identified in the approved grant budget documents.
- g) That it understands and accepts full financial responsibility and may not be reimbursed for costs incurred which have not been approved by the State and the U.S. Department of Homeland Security, FEMA Grant Programs Directorate.

- h) That it will not deviate from the items listed in the approved grant budget documents without first securing written authority from the City.
- i) That all publications created with funding under this grant shall prominently contain the following statement: "This document was prepared under a grant from FEMA's Grant Programs 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 Grant Programs Directorate or the U.S. Department of Homeland Security."
- j) That all financial records, supporting documentation and all other records pertinent to this grant or agreements under this grant shall be retained for a minimum of six years following termination, completion or expiration of this Agreement for purposes of City, State or Federal examination and audit.
- k) To obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to appraise itself of all rules and regulations set forth.
- l) Not to supplant its local funds with federal and to, instead, use the federal funds to increase the amount of funds that, in the absence of federal aid, would be made available to fund programs within the UASI grant program guidelines.
- m) To list the City as a party to be held harmless and, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, indemnified by the County and any contractor or subcontractor thereof, for any injury to person or property arising out of the equipment, supplies, or services provided under this Agreement, and as a party to whom a listed duty is due.
- n) To comply with National Incident Management System (NIMS) objectives identified as requirements by the State.
- o) To comply with all applicable federal, state, and local environmental and historic preservation (EHP) requirements and provide information requested to ensure compliance with applicable laws.
- p) To timely comply with all reporting obligations required by the Grant's terms and the City.

- q) To provide the City with Performance Reports, Financial Reimbursement Reports and Audit Reports when required by the City and in the form required by the City.
- i. Performance Reports are due to POEM biannually on June 15th and December 15th during the term of the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
 - ii. Financial Reimbursement Reports are due no less frequently than quarterly during the term of the grant agreement. Late Financial Reimbursement Reports could result in the suspension and/or termination of the grant.
 - iii. Per UASI Grant #10-170, Section K.2.b., reimbursement for expenses may be withheld if performance reports are not submitted by the specified dates or are incomplete.
- r) To follow the travel expense and Per Diem guidelines as set forth by the U.S. General Services Administration (GSA) as well as the guidelines of the City and State. Per UASI Grant #10-170, Section K.2.c., reimbursements 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 dates, the times, and places of travel, and the actual expense or authorized rates incurred.

GSA per diem rates can be found on the GSA website:
<http://www.gsa.gov/portal/category/21287>.

The City's guidelines can be found on the Office of the City Auditor's website:

BCP-FIN-6.13 Travel:

<http://www.portlandonline.com/auditor/index.cfm?c=34747&a=160271>

BCP-FIN-6.14 Non-travel Meals, Light Refreshments and Related Miscellaneous Expenses:

<http://www.portlandonline.com/auditor/index.cfm?&a=160283&c=34747>

- s) To comply with all of its obligations under this agreement and any applicable, incorporated document or documents.
3. **Effective Date and Duration.** This Agreement shall be effective from the date both parties have signed and shall be terminated on December 31, 2012 unless otherwise extended by the parties in writing or this IGA is terminated due to failure of one of the Parties to perform.

4. **Amendment.** This Agreement may be modified or amended only by the written agreement of both parties but must remain consistent with the requirements of the UASI program and the Agreement between the State and the City.
5. **Termination.** Either party may terminate this Agreement in the event the other fails to comply with its obligations under the Agreement. If the Agreement is terminated due to the County's failure or inability to comply with the provisions of the grants or the Agreement, the County will be liable to the City for the full cost of any equipment, materials, or services provided by the City to the County, and of any penalties imposed by the state or federal government. Each party will notify the other, in writing, of its intention to terminate this Agreement and the reasons therefore. The other party shall have fourteen days, or such other time as the parties may agree, from the date of the notice in which to correct or otherwise address the compliance failure which is the subject of the notice.
6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding that arises from or relates to this Agreement shall be brought and conducted exclusively within the Circuit Court of the State of Oregon for the County of Multnomah. In the event a claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively in the United States District Court for the District of Oregon.
7. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
8. **Survival.** The terms, conditions, representations and all warranties in this Agreement shall survive the termination or expiration of this Agreement.
9. **Force Majeure.** Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond reasonable control. Each party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Agreement.
10. **Indemnification.** Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall indemnify, defend and hold harmless the City, its commissioners, employees and agents from and against any and all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys fees arising out of or resulting from the acts of County, its officers, employees and agents in the performance of this agreement.

EXHIBIT A

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the City shall indemnify, defend and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of the City, its officers, employees and agents in the performance of this agreement.

11. **Third Party Beneficiaries.** The City and the County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such persons are individually identified by name herein.
12. **Successors in Interest.** The terms of this Agreement shall be binding upon the successors and assigns of each party hereto.
13. **Entire Agreement.** The parties agree and acknowledge that this Agreement is a complete, integrated agreement that supersedes any prior understandings related to implementation of the FY-10 UASI program grant and that it is the entire agreement between them relative to that grant.
14. **Worker's Compensation.** Each party shall be responsible for providing worker's compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027). Neither party shall be required to provide or show proof of any other insurance coverage.
15. **Nondiscrimination.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
16. **Access to Records.** Each party shall maintain, and shall have access to the books, documents, papers and other records of the other party which are related to this agreement for the purpose of making audit, examination, excerpts, and transcripts. Copies of applicable records shall be made available upon request. Access to records for Oregon Emergency Management (OEM), Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall not be limited to the required retention period but shall last as long as records are retained.

EXHIBIT A

17. **Subcontracts and Assignment.** Neither party will subcontract or assign any part of this agreement without the prior written consent of the other party. Notwithstanding City approval of a subcontractor, the County shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the County hereunder.

City of Portland

_____ Date _____

APPROVED AS TO FORM

_____ Date _____
Attorney

Clackamas County

Charlotte Loh Date 9-15-2011 B.I

APPROVED AS TO FORM

David W. Anderson Date 7/25/11
Attorney