



RESOLUTION 2010-038

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN IGA WITH WASHINGTON COUNTY FOR THE PURPOSE OF PARTICIPATION IN THE URBAN AREA SECURITY INITIATIVE (UASI)

WHEREAS, The duly elected governing body of the City of Sherwood, Oregon, having been presented with information about the need for enhanced public safety with regard to its involvement with the Urban Area Security Initiative (UASI); and

WHEREAS, The Sherwood City Council hereby resolves that entering into an Intergovernmental Agreement (IGA) with Washington County meets the public safety needs of the citizens of the City of Sherwood and authorizes the City Manager to enter into an IGA with Washington County for the purposes of participation in the Urban Area Security Initiative (UASI).

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

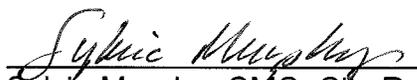
Section 1. The City Manager is authorized to enter into an Intergovernmental Agreement attached as Exhibit A, with Washington County,

Duly passed by the City Council this 17th day of August 2010.



Keith S. Mays, Mayor

Attest:



Sylvia Murphy, CMC, City Recorder

BCC 10-0422

INTERGOVERNMENTAL AGREEMENT

Between

WASHINGTON COUNTY, OREGON
and
THE CITY OF SHERWOOD, OREGON

THIS IS an intergovernmental agreement (IGA) between Washington County (County) and the City of Sherwood (City) entered into pursuant to the authority granted in ORS Chapter 190 for the coordination of activities related to the purchase of equipment, supplies, professional services, and training being funded by the United States Department of Homeland Security's Urban Areas Security Initiative (UASI) grant program.

Recitals

WHEREAS, the United States Department of Homeland Security, FEMA Grant Programs Directorate, provided UASI grant funding in the amount of \$7,790,000 in FY-07, \$7,556,500 in FY-08, and \$7,178,800 in FY-09 to the state of Oregon for distribution to the Portland, Oregon Urban Area to address the area's unique equipment, training, planning, and exercise needs and to assist the area in building an enhanced and sustainable capacity to prevent, respond to, and recover from threats or acts of terrorism; and

WHEREAS, the state of Oregon awarded UASI Grants #07-071, #08-170, and #09-170 to the city of Portland, Office of Emergency Management (POEM), as Grantee, for FY-07, FY-08, and FY-09 in the amounts of \$6,806,353, \$7,456,500 and \$6,581,436 respectively, copies of which are attached to this Agreement and incorporated herein as Exhibits A, B, and C; and

WHEREAS, UASI Grant #07-071, #08-170, and #09-170 are intended to increase the ability of the Portland, Oregon Urban Area, which includes jurisdictions in Multnomah, Clackamas, Columbia and Washington counties in Oregon and Clark County in Washington, to prevent, respond to, and recover from chemical, biological, radiological, nuclear and explosive (CBRNE) events; and

WHEREAS, after extensive, coordinated discussions between state and urban area officials, a list of equipment, supplies, professional services, and training to be purchased for or by jurisdictions in the urban area has been developed; and

WHEREAS, the city of Portland, 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, the city of Portland, as Grant Administrator, is required to make periodic reports to the state of Oregon 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 of Portland and all other urban area jurisdictions that receive direct benefit from UASI grant purchases are required to comply with all terms of the UASI grants including, but not limited to, obligations regarding access to records and supplanting of funds; and

WHEREAS, the city of Portland has entered into agreements with the urban area 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; and

WHEREAS, the County entered into its initial agreement with the city of Portland on September 8, 2004 and accepted responsibility for coordinating the FY-03 and FY-04 UASI grant processes within the County and subsequently extended its agreement with the city of Portland for the grant awards in FY-05 through FY-09.

NOW, THEREFORE, the Parties agree as follows:

1. The County agrees:

To coordinate grant-related procurement, reimbursement, and reporting activities with directly benefiting jurisdictions in the County consistent with the processes developed by the city of Portland to manage those activities.

2. The City agrees:

- a) That it has read the award conditions and certifications for grants #07-071, #08-170, and #09-170, 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 of Portland, as grantee, under those grant documents.
- b) To comply with the purchasing and reimbursement processes required by the grants, this Agreement, and the city of Portland.
- c) To appropriately use and conserve all UASI funded equipment, supplies and/or materials provided for CBRNE incident prevention, preparedness, response, and recovery.
- d) That all equipment, supplies, and services provided by the city of Portland to the City are as described in the approved grant budget documents, which the City has seen.

- e) To treat all single items of equipment valued over \$5,000 as fixed assets and to provide the city of Portland with a list of such equipment showing dates of purchase, equipment description, serial numbers, and locations where the equipment is housed or stored.
- f) That any request or invoice it submits for reimbursement of costs for City staff training is consistent with the training identified in the approved grant budget documents, which the City has seen.
- g) That the City understands and accepts full financial responsibility and may not be reimbursed for costs incurred for training which has not been approved by the State and the U.S. Department of Homeland Security, FEMA Grant Programs Directorate, even though that training may appear on the approved grant budget documents.
- h) That the City will not deviate from the items listed in the approved grant budget documents without first securing written authority from the city of Portland.
- i) That any public statement by the City referring to the receipt of UASI funded equipment, supplies, services, or training shall indicate that the funds for the purchase came from the U.S. Department of Homeland Security, FEMA Grant Programs Directorate, Urban Areas Security Initiative grant program and the percent or dollar amount of federal funds used in the purchase.
- j) 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. [All of these documents are to be retained for a minimum of five years after the contract has been awarded and available for review, upon request, to federal, state, and city of Portland employees or their agents or officers. Review may occur at any time, even after five years, if the records are still available.]
- k) To obtain copies of all federal regulations with which the City must comply.
- 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 the City to fund programs within the Urban Areas Security Initiative grant program guidelines.
- m) To list the city of Portland 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 City 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 in the NIMS implementation chart for state, territories, tribes, and local jurisdictions.
 - n) To comply with all property/equipment tracking and monitoring processes required by the grants, this Agreement, and the city of Portland.
 - o) To comply with all applicable federal, state, and local environmental and historic preservation (EHP) requirements and provide any information requested by FEMA to ensure compliance with applicable laws.
3. **Effective Date and Duration.** This Agreement shall be effective from the date both parties have signed and shall continue in effect until all mutual covenants expressed herein have been fully satisfied or until the Agreement is terminated due to the failure of one of the parties hereto to perform.
 4. **Amendment.** This Agreement may be amended by written agreement of both parties but must remain consistent with the requirements of the Urban Areas Security Initiative program, the UASI grants from the State to the city of Portland, and the city of Portland's UASI grant agreement with the County.
 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 City's failure or inability to comply with the provisions of the grants or the Agreement, the City will be liable to the city of Portland for the full cost of any equipment, materials, or services provided by the city of Portland to the City, 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 Washington County for the state of Oregon. 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 limits of the Oregon Tort Claims Act and the Oregon Constitution, the City shall hold harmless, indemnify and defend the County, its commissioners, employees and agents from any and all claims, damages, losses, and expenses, including but not limited to reasonable attorneys fees arising out of or resulting from city's performance of or failure to perform the obligations of this Agreement.
11. **Third Party Beneficiaries.** The County and the City 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-07, FY-08, and FY-09 UASI program grants and that it is the entire agreement between them relative to those grants.

Washington County

Tom Buan Date 6/8/10

APPROVED AS TO FORM

Alan M. Miller Date 6/11/10
Attorney

APPROVED WASHINGTON COUNTY
BOARD OF COMMISSIONERS

MINUTE ORDER # 10-180

DATE 6-8-10

BY Barbara Hejmanek
CLERK OF THE BOARD

City of Sherwood

Date _____

APPROVED AS TO FORM

Attorney

Date _____

**OREGON MILITARY DEPARTMENT
 OFFICE OF EMERGENCY MANAGEMENT
 URBAN AREAS SECURITY INITIATIVE – CFDA # 97.008**

GRANT AWARD CONDITIONS AND CERTIFICATIONS

PROGRAM NAME:	Portland FY07 UASI Grant	GRANT NO:	# 07-071
SUBGRANTEE:	City of Portland Portland Office of Emergency Management (POEM)	FY 2007 AWARD:	\$6,806,353
ADDRESS:	1001 SW 5 th Avenue, Suite 650 Portland, OR 97204	AWARD PERIOD:	11/1/07 thru 5/31/10
PROGRAM CONTACT:	Carmen Merlo carmen.merlo@ci.portland.or.us	TELEPHONE:	(503) 823-2691
		FAX:	(503) 823-3903
FISCAL CONTACT:	Andreea Codorean andreea.codorean@ci.portland.or.us	TELEPHONE:	(503) 823-2694
		FAX:	(503) 823-3903

BUDGET

REVENUE

Federal Grant Funds	\$6,806,353
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TOTAL REVENUE: \$6,806,353

EXPENDITURES

Citizen Corps Program	\$474,500
Exercises	\$50,000
Information Technology	\$30,000
Interoperable Communications	\$2,128,636
Logistical Support	\$170,100
Medical Supplies/Pharmaceuticals	\$227,298
Other Equipment	\$4,704
Power Equipment	\$126,000
Physical Security Enhancement	\$15,000
Planning	\$2,636,729
Search and Rescue	\$442,697
Training	\$297,000
Administration	\$203,689

TOTAL EXPENDITURES: \$6,806,353

This document along with the terms and conditions and grant application attached hereto and any other document referenced constitute an agreement between the Oregon Military Department, Office of Emergency Management (OEM) and the Subgrantee. No waiver, consent, modification or change of terms of this agreement shall be binding unless agreed to in writing and signed by both the Subgrantee and OEM. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Subgrantee, by signature of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it, and agrees to be bound by its terms and conditions (including all references to other documents). Failure to comply with this agreement and with applicable state and federal rules and guidelines may result in the withholding of reimbursement, the termination or suspension of the agreement, denial of future grants, and/or damages to OEM.

TERMS AND CONDITIONS

I. CONDITIONS OF AWARD

- A. The Subgrantee agrees to operate the program as described in the application and to expend funds in accordance with the approved budget unless the Subgrantee receives prior written approval by OEM to modify the program or budget. OEM may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by OEM. Failure of the Subgrantee to operate the program in accordance with the written agreed upon objectives contained in the grant application and budget will be grounds for immediate suspension and/or termination of the grant agreement.
- B. To ensure consistency among statewide planning efforts, the Subgrantee agrees to coordinate grant funded planning projects with OEM, to include assistance with the creation of a scope of work, review and approval of service providers, and overall project direction.
- C. The Subgrantee agrees that funds utilized to establish or enhance state and local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines and achievement of a baseline level of capability as defined by the Fusion Capability Planning Tool.
- D. The Subgrantee agrees 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 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."
- E. The Subgrantee agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the U.S. Department of Homeland Security."
- F. By accepting FY 2007 funds, the Subgrantee certifies that it has met NIMS compliance activities outlined in the NIMS Implementation Matrix for State, Tribal, or Local Jurisdictions. Additional information on achieving compliance is available through the NIMS Integration Center (NIC) at <http://www.fema.gov/emergency/nims/>.
- G. Maintenance, Retention, and Access to Records; Audits.
1. Maintenance and Retention of Records. The Subgrantee agrees to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and the financial and administrative requirements set forth in the current edition of the Office of Grant Operations (OGO) Financial Management Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A-87, A-102, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this grant or agreements under this grant shall be retained by the Subgrantee for a minimum of five years for purposes of State of Oregon or Federal examination and audit. It is the responsibility of the Subgrantee to obtain a copy of the OGO Financial Management Guide from the Office of Grants and Training and apprise itself of all rules and regulations set forth. A copy is available at: http://www.dhs.gov/xlibrary/assets/Grants_FinancialManagementGuide.pdf.
 2. Retention of Equipment Records. Records for equipment shall be retained for a period of three years from the date of the disposition or replacement or transfer at the discretion of the awarding agency. Title to all equipment and supplies purchased with funds made available under the State Homeland Security Grant Program (SHSGP) shall vest in the Subgrantee agency that purchased the property, if it provides written certification to OEM that it will use the property for purposes consistent with the State Homeland Security Grant Program.
 3. Access to Records. OEM, Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Subgrantee and any contractors or subcontractors of Subgrantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained.

4. **Audits.** If Subgrantee *expends* \$500,000 or more in Federal funds (from all sources) in its fiscal year, Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of OMB Circular A-133. Copies of all audits must be submitted to OEM within 30 days of completion. If Subgrantee expends less than \$500,000 in its fiscal year in Federal funds, Subgrantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section I.G.3 herein.
5. **Audit Costs.** Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If Subgrantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

H. **Funding.**

1. **Matching Funds.** This Grant does not require matching funds.
2. **Supplanting.** The Subgrantee certifies that federal funds will not be used to supplant state or local funds, but will be used to increase the amount of funds that, in the absence of federal aid, would be made available to the Subgrantee to fund programs consistent with State Homeland Security Grant Program guidelines.

I. **Reports.** Failure of the Subgrantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments and/or termination of the grant agreement.

1. **Initial Strategy Implementation Plan (ISIP), Progress Reports, and Biannual Strategy Implementation Reports (BSIR).**

The first report, the Initial Strategy Implementation Plan (ISIP), is due by **October 15, 2007** and will be completed by the Office of Emergency Management.

The Subgrantee agrees to submit two types of semi-annual reports on its progress in meeting each of its agreed upon goals and objectives. One is a narrative progress report that addresses specific information regarding the activities carried out under the FY 2007 State Homeland Security Grant Program and how they address identified project specific goals and objectives. The second is a set of web-based applications that details how funds are linked to one or more projects, which in turn must support specific goals and objectives in the State or Urban Area Homeland Security Strategy.

Reports are due **January 15, 2008; July 15, 2008; January 15, 2009; July 15, 2009; January 15, 2010; and July 15, 2010** or whenever Requests for Reimbursement are submitted, whichever comes first. Narrative reports may be submitted with reimbursements, or included in the "Project Notes" section of the BSIR.

Any progress report or Biannual Strategy Implementation Report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. Subgrantee must receive prior written approval from OEM to extend a progress report requirement past its due date.

2. **Financial Reimbursement Reports.**

- a. In order to receive reimbursement, the Subgrantee agrees to submit a signed Request for Reimbursement (RFR) which includes **supporting documentation for all grant expenditures.** RFRs may be submitted quarterly but no less frequently than semi-annually during the term of the grant agreement. At a minimum, RFRs must be received no later than **January 31, 2008; July 31, 2008; January 31, 2009; July 31, 2009; January 31, 2010; and June 30, 2010.**

Reimbursements for expenses will be withheld if progress reports are not submitted by the specified dates or are incomplete.

- 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. Reimbursements will only be made for actual expenses incurred during the grant period. The Subgrantee agrees that no grant funds may be used for expenses incurred before November 1, 2007 or after May 31, 2010.
 - d. Subgrantee 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. OEM 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. Subgrantee shall provide OEM copies of all audit reports pertaining to this Grant Agreement obtained by Subgrantee, whether or not the audit is required by OMB Circular A-133.

J. Procurement Standards.

1. Subgrantee shall follow the same policies and procedures used for procurement from its non-Federal funds. Subgrantee shall use their own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law and standards.
2. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM. Interagency agreements between units of government are excluded from this provision.
 - a. **Subgrantees may not proceed with sole source procurement in excess of \$100,000 without prior written approval from OEM.** Should a recipient elect to award a contract in excess of \$100,000 without competition, sole source justification will be necessary.
 - b. Justification must be provided for non-competitive procurement in excess of \$100,000 and should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information.
3. The Subgrantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.

K. Indemnification.

The Subgrantee 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, OEM, and their officers, employees, agents, and members from all claims, suits and actions of whatsoever nature resulting from or arising out of the activities of Subgrantee, its officers, employees, subcontractors, or agents under this grant.

Subgrantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, OEM, and 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.

Subgrantee 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, OEM, 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.

- L. Copyright and Patents.
1. Copyright. If this agreement or any program funded by this agreement results in a copyright, OEM and the U.S. Department of Homeland Security reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and 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 Subgrantee, or its contractor or subcontractor, purchases ownership with grant support.
 2. Patent. If this agreement or any program funded by this agreement results in the production of patentable items, patent rights, processes, or inventions, the Subgrantee or any of its contractors or subcontractors shall immediately notify OEM. OEM will provide the Subgrantee with further instruction on whether protection on the item will be sought and how the rights to the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.
- M. No Implied Waiver, Cumulative Remedies. The failure of OEM to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.
- N. Governing Law; Venue; Consent to Jurisdiction. 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 (collectively, "Claim") between OEM (and/or any other agency or department of the State of Oregon) and Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **Subgrantee, by execution of this agreement, hereby consents to the In Personam Jurisdiction of said courts.**
- O. Notices. Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to Subgrantee or OEM at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- P. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of OEM, Subgrantee, and their respective successors and assigns, except that Subgrantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of OEM.
- Q. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section I.G (Maintenance, Retention and Access to Records; Audits); Section I.I (Reports); and Section I.K (indemnification).
- R. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- S. Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

II. Subgrantee Compliance and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Subgrantee certifies by accepting grant funds that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. (This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 69 and 28 CFR Part 67.) Subgrantees shall establish procedures to provide for effective use and/or dissemination of the Excluded Parties List (<http://www.epls.gov/>) to assure that their contractors are not in violation of the nonprocurement debarment and suspension common rule.
- B. Standard Assurances and Certifications Regarding Lobbying. Subgrantees are required to comply with 28 CFR Part 69, *New Restrictions on Lobbying* (http://www.access.gpo.gov/nara/cfr/waisidx_04/28cfr69_04.html). The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. Subgrantees must understand that no federally-appropriated funding made available under this grant program may be used, either directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government.
- C. Compliance with Applicable Law. The Subgrantee agrees to comply with all applicable laws, regulations, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this agreement, including but not limited to:
1. The provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures, and Federal laws or regulations applicable to Federal assistance programs.
 2. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646).
 3. Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat.97, approved December 31, 1976.
 4. Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.)
 5. National Environmental Policy Act of 1969, 42 USC 4321 et seq.
 6. Flood Disaster Protection Act of 1973, 42 USC 4001 et seq.
 7. Clean Air Act, 42 USC 7401 et seq.
 8. Clean Water Act, 33 USC 1368 et seq.
 9. Federal Water Pollution Control Act of 1948, as amended, 33 USC 1251 et seq.
 10. Safe Drinking Water Act of 1974, 42 USC 300f et seq.
 11. Endangered Species Act of 1973, 16 USC 1531 et seq.
 12. Wild and Scenic Rivers Act of 1968, as amended, 16 USC 1271 et seq.
 13. Historical and Archaeological Data Preservation Act of 1960, as amended, 16 USC 469 et seq.
 14. Coastal Zone Management Act of 1972, 16 USC 1451 et seq.
 15. Coastal Barrier Resources Act of 1982, 16 USC 3501 et seq.
 16. Indian Self-Determination Act, 25 USC 450f.
 17. Hatch Political Activity Act of 1940, as amended, 5 USC 1501 et seq.
 18. Animal Welfare Act of 1970, 7 USC 2131 et seq.
 19. Demonstration Cities and Metropolitan Development Act of 1966, 42 USC 3301 et seq.
 20. Federal Fair Labor Standards Act of 1938 (as appropriate), as amended, 29 USC 201 et seq.

D. Certification of Non-discrimination.

1. The Subgrantee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this agreement on the basis of race, color, age, religion, national origin, handicap, or gender. The Subgrantee, and all its contractors and subcontractors, assures compliance with the following laws:
 - a. Non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended;
 - b. Title IV of the Civil Rights Act of 1964, as amended;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended;
 - d. Title II of the Americans with Disabilities Act (ADA) of 1990,
 - e. Title IX of the Education Amendments of 1972;
 - f. The Age Discrimination Act of 1975;
 - g. The Department of Justice Nondiscrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G;
 - h. The Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.
2. In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, handicap or gender against the Subgrantee or any of its contractors or subcontractors, the Subgrantee or any of its contractors or subcontractors will forward a copy of the finding to the Oregon Military Department, Office of Emergency Management (OEM). OEM will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

E. Civil Rights Compliance. All recipients of federal grant funds are required, and Subgrantee agrees, to comply with nondiscrimination requirements of Title VI of the Civil Rights Act, of 1964, as amended, 42 U.S.C. § 2000d et seq. (prohibiting discrimination in programs or activities on the basis of race, color, and national origin); Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3789d(c)(1) (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, and gender); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination in employment practices or in programs and activities on the basis of disability); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 (prohibiting discrimination in services, programs, and activities on the basis of disability); The Age Discrimination Act of 1975, 42 U.S.C. § 6101-07 (prohibiting discrimination in programs and activities on the basis of age); and Title IX of the Education Amendments of 1972, 20 U.S.C § 1681 et seq. (prohibiting discrimination in educational programs or activities on the basis of gender).

F. Equal Employment Opportunity Program. *Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000 et seq.* – No person on the grounds of race, color or national origin will be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program or activity receiving Federal financial assistance. The Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program as required by this section will be in effect on or before the effective date of this agreement.

If required to formulate an Equal Employment Opportunity Program (EEOP), the Subgrantee must maintain a current copy on file which meets the applicable requirements.

G. Services to Limited English Proficient (LEP) Persons. Subgrantees are required to comply with several federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended. These laws prohibit discrimination on the basis of race, color, religion, national origin, and sex in the delivery of services. National origin discrimination includes discrimination on the basis of limited English proficiency. To ensure compliance with Title VI, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. For additional information, please see <http://www.lep.gov>.

H. Environmental and Historic Preservation.

1. Subgrantee shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Subgrantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. Subgrantee shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings that are 50 years old or greater. Subgrantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Subgrantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Subgrantee will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office.
2. For any of the Subgrantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Subgrantee, upon specific request from the U.S. Department of Homeland Security, agrees to cooperate with the U.S. Department of Homeland Security in any preparation by the U.S. Department of Homeland Security of a national or program environmental assessment of that funded program or activity.

I. Certification Regarding Drug Free Workplace Requirements. Subgrantee certifies that it will provide a drug-free workplace. There are two general requirements if you are a recipient other than an individual.

1. First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. Briefly, those measures are to:
 - a. Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see Sec. 83.205 through 83.220); and
 - b. Take actions concerning employees who are convicted of violating drug statutes in the workplace (see Sec. 83.225).
2. Second, you must identify all known workplaces under your Federal awards (see Sec. 83.230).

Additional information can be referenced at:
http://www.access.gpo.gov/nara/cfr/waisidx_04/28cfrv2_04.html.

III. **Suspension or Termination of Funding**

The Oregon Military Department, Office of Emergency Management may suspend funding in whole or in part, terminate funding, or impose another sanction on a State Homeland Security Grant Program recipient for any of the following reasons:

- A. Failure to comply substantially with the requirements or statutory objectives of the State Homeland Security Grant Program guidelines issued thereunder, or other provisions of federal law.
- B. Failure to make satisfactory progress toward the goals and objectives set forth in the approved Project Justification(s).
- C. Failure to adhere to the requirements of the grant award and standard or special conditions.
- D. Proposing or implementing substantial plan changes to the extent that, if originally submitted, the application would not have been selected.
- E. Failing to comply substantially with any other applicable federal or state statute, regulation, or guideline. Before imposing sanctions, the Office of Emergency Management will provide reasonable notice to the Subgrantee of its intent to impose sanctions and will attempt to resolve the problem informally.

IV. Subgrantee Representations and Warranties

Subgrantee represents and warrants to OEM as follows:

- A. Existence and Power. Subgrantee is a political subdivision of the State of Oregon. Subgrantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- B. Authority, No Contravention. The making and performance by Subgrantee of this Agreement (a) have been duly authorized by all necessary action of Subgrantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Subgrantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subgrantee is a party or by which Subgrantee or any of its properties are bound or affected.
- C. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Subgrantee and constitutes the legal, valid, and binding obligation of Subgrantee, enforceable in accordance with its terms.
- D. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subgrantee of this Agreement.

David Cassel, Domestic Preparedness Manager
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
(503) 378-2911 ext 22226

Date

Signature of Authorized Subgrantee Official

Date

Name/Title

Signature of Authorized Fiscal Representative of Subgrantee Agency

Date

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**OREGON MILITARY DEPARTMENT
 OFFICE OF EMERGENCY MANAGEMENT
 URBAN AREAS SECURITY INITIATIVE – CFDA # 97.008
 GRANT AWARD CONDITIONS AND CERTIFICATIONS**

PROGRAM NAME:	Portland FY08 UASI Grant	GRANT NO:	# 08-170
SUBGRANTEE:	City of Portland Portland Office of Emergency Management (POEM)	FY 2008 AWARD:	\$7,456,500
ADDRESS:	1001 SW 5th Avenue, Suite 650 Portland, OR 97204	AWARD PERIOD:	11/1/08 thru 5/31/11
PROGRAM CONTACT:	Carmen Merlo carmen.merlo@ci.portland.or.us	TELEPHONE:	(503) 823-2691
		FAX:	(503) 823-3903
FISCAL CONTACT:	Shelli Tompkins shelli.tompkins@ci.portland.or.us	TELEPHONE:	(503) 823-4187
		FAX:	(503) 823-3903

BUDGET

REVENUE

Federal Grant Funds \$7,456,500

TOTAL REVENUE: \$7,456,500

EXPENDITURES

Equipment

- CBRNE Incident Response Vehicles \$9,000
- CBRNE Logistical Support \$154,635
- CBRNE Operational/Search and Rescue \$711,560
- Detection \$112,960
- Explosive Device Mitigation \$295,367
- Information Technology \$1,180,182
- Interoperable Communications \$1,486,327
- Medical \$97,500
- Other Authorized Equipment \$39,541
- Personal Protective Equipment \$169,016
- Power Equipment \$4,200
- Terrorism Incident Prevention \$203,700

Exercises \$214,377

Planning \$1,771,475

Training (ODP-approved) \$782,965

Administration \$223,695

TOTAL EXPENDITURES: \$7,456,500

This document along with the terms and conditions and grant application attached hereto and any other document referenced constitute an agreement between the Oregon Military Department, Office of Emergency Management (OEM) and the Subgrantee. No waiver, consent, modification or change of terms of this agreement shall be binding unless agreed to in writing and signed by both the Subgrantee and OEM. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Subgrantee, by signature of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it, and agrees to be bound by its terms and conditions (including all references to other documents). Failure to comply with this agreement and with applicable state and federal rules and guidelines may result in the withholding of reimbursement, the termination or suspension of the agreement, denial of future grants, and/or damages to OEM.

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TERMS AND CONDITIONS

I. Conditions of Award

- A. The Subgrantee agrees to operate the program as described in the application and to expend funds in accordance with the approved budget unless the Subgrantee receives prior written approval by OEM to modify the program or budget. OEM may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by OEM. Failure of the Subgrantee to operate the program in accordance with the written agreed upon objectives contained in the grant application and budget will be grounds for immediate suspension and/or termination of the grant agreement.
- B. To ensure consistency among statewide planning efforts, the Subgrantee agrees to coordinate grant funded planning projects with OEM, to include assistance with the creation of a scope of work, review and approval of service providers, and overall project direction.
- C. The Subgrantee agrees that funds utilized to establish or enhance state and local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines and achievement of a baseline level of capability as defined by the Fusion Capability Planning Tool.
- D. The Subgrantee agrees 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."
- E. The Subgrantee agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.
- F. The Subgrantee agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- G. By accepting FY 2008 funds, the Subgrantee certifies that it has met NIMS compliance activities outlined in the NIMS Implementation Matrix for State, Tribal, or Local Jurisdictions. Additional information on achieving compliance is available through the NIMS Integration Center (NIC) at <http://www.fema.gov/emergency/nims/>.
- H. Administrative Requirements, Retention and Access to Records, and Audits.
1. Administrative Requirements. The Subgrantee agrees to comply with all financial management and procurement requirements, including competitive bid processes and other procurement requirements, 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 and the U.S. Department of Homeland Security's Financial Management Guide. A nonexclusive list of regulations commonly applicable to DHS grants includes:
 - a. Administrative Requirements. 44 CFR Part 13 (Grants and Cooperative Agreements to State and Local Governments) and 2 CFR Part 215 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).
 - b. Cost Principles. 2 CFR Part 225 (State and Local Governments); 2 CFR Part 230 (Non-Profit Organizations); and Federal Acquisition Regulations Sub-part 31.2 (Contracts with Commercial Organizations).
 - c. Audit Requirements. OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).

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2. Retention of Records. All financial records, supporting documentation, and all other records pertinent to this grant or agreements under this grant shall be retained by the Subgrantee for a minimum of five years for purposes of State of Oregon or Federal examination and audit. It is the responsibility of the Subgrantee to obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to apprise itself of all rules and regulations set forth.
3. Access to Records. OEM, Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Subgrantee and any contractors or subcontractors of Subgrantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained.
4. Audits. If Subgrantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of OMB Circular A-133. Copies of all audits must be submitted to OEM within 30 days of completion. If Subgrantee expends less than \$500,000 in its fiscal year in Federal funds, Subgrantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section I.H.3 herein.
5. Audit Costs. Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If Subgrantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

I. Procurement Standards.

1. Subgrantee shall follow the same policies and procedures used for procurement from its non-Federal funds. Subgrantee shall use their own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law and standards.
2. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM. Interagency agreements between units of government are excluded from this provision.
 - a. Subgrantees may not proceed with sole source procurement in excess of \$100,000 without prior written approval from OEM. Should a recipient elect to award a contract in excess of \$100,000 without competition, sole source justification will be necessary.
 - b. Justification must be provided for non-competitive procurement in excess of \$100,000 and should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information.
3. The Subgrantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.

J. Property/Equipment Management and Records Control, and Retention of Records.

1. Property/Equipment Management and Records Control. Subgrantee agrees to comply with all requirements set forth in 44 CFR Section 13 for the active tracking and monitoring of property/equipment. Procedures for managing property/equipment, whether acquired in whole or in part with grant funds, until disposition takes place, will, at a minimum, meet the following requirements:
 - a. All property/equipment purchased under this agreement, whether by the Subgrantee or a subcontractor, will be recorded and maintained in the Subgrantee's property/equipment inventory system.

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- b. Subgrantee shall maintain property/equipment records that include: a description of the property/equipment; the manufacturer's serial number, model number, or other identification number; the source of the property/equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; who holds title; the acquisition date; the cost of the property/equipment and the percentage of Federal participation in the cost; the location, use and condition of the property/equipment; and any ultimate disposition data including the date of disposal and sale price of the property/equipment.
 - c. A physical inventory of the property/equipment must be taken and the results reconciled with the property/equipment records, at least once every two years.
 - d. Subgrantee agrees that, when practicable, any property/equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the U.S. Department of Homeland Security".
 - e. Adequate maintenance procedures must be developed to keep the property/equipment in good condition.
 - f. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property/equipment. Any loss, damage, or theft shall be investigated.
 - g. Subgrantee must adequately safeguard all such property/equipment and must assure that it is used solely for authorized purposes.
 - h. If the Subgrantee is authorized to sell the property/equipment, proper sales procedures must be established to ensure the highest possible return.
 - i. Subgrantee shall pass on property/equipment management requirements that meet or exceed the requirements outlined above for all subcontractors, consultants, and subgrantees who receive pass-through funding from this grant agreement.
2. Retention of Property/Equipment Records: Records for property/equipment shall be retained for a period of five years from the date of the disposition or replacement or transfer at the discretion of the awarding agency. Title to all property/equipment and supplies purchased with funds made available under the Homeland Security Grant Program (HSGP) shall vest in the Subgrantee agency that purchased the property/equipment, if it provides written certification to OEM that it will use the property/equipment for purposes consistent with the Homeland Security Grant Program.

K. Funding.

1. Matching Funds. This Grant does not require matching funds.
2. Supplanting. The Subgrantee certifies that federal funds will not be used to supplant state or local funds, but will be used to increase the amount of funds that, in the absence of federal aid, would be made available to the Subgrantee to fund programs consistent with Homeland Security Grant Program (HSGP) guidelines.

L. Reports. Failure of the Subgrantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments and/or termination of the grant agreement.

1. Initial Strategy Implementation Plan (ISIP), Progress Reports, and Biannual Strategy Implementation Reports (BSIR).

The first report, the Initial Strategy Implementation Plan (ISIP), is due by **October 23, 2008** and will be completed by the Office of Emergency Management.

The Subgrantee agrees to submit two types of semi-annual reports on its progress in meeting each of its agreed upon goals and objectives. One is a narrative progress report that addresses specific information regarding the activities carried out under the FY 2008 State Homeland Security Grant Program and how they address identified project specific goals and objectives. The second is a set of web-based applications

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that details how funds are linked to one or more projects, which in turn must support specific goals and objectives in the State or Urban Area Homeland Security Strategy.

Reports are due **January 15, 2009; July 15, 2009; January 15, 2010; July 15, 2010; January 14, 2011; and July 15, 2011 or whenever Requests for Reimbursement are submitted, whichever comes first.** Narrative reports may be submitted with reimbursements, or included in the "Project Notes" section of the BSIR.

Any progress report or Biannual Strategy Implementation Report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. Subgrantee must receive prior written approval from OEM to extend a progress report requirement past its due date.

2. Financial Reimbursement Reports.

a. In order to receive reimbursement, the Subgrantee agrees to submit a signed Request for Reimbursement (RFR) which includes **supporting documentation for all grant expenditures.** RFRs may be submitted quarterly but no less frequently than semi-annually during the term of the grant agreement. **At a minimum, RFRs must be received no later than January 30, 2009; July 31, 2009; January 29, 2010; July 30, 2010; January 31, 2011; and June 30, 2011.**

Reimbursements for expenses will be withheld if progress reports are not submitted by the specified dates or are incomplete.

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. Reimbursements will only be made for actual expenses incurred during the grant period. The Subgrantee agrees that no grant funds may be used for expenses incurred before **November 1, 2008 or after May 31, 2011.**

d. Subgrantee 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. OEM 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. Subgrantee shall provide OEM copies of all audit reports pertaining to this Grant Agreement obtained by Subgrantee, whether or not the audit is required by OMB Circular A-133.

M. Indemnification.

The Subgrantee 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, OEM, and their officers, employees, agents, and members from all claims, suits and actions of whatsoever nature resulting from or arising out of the activities of Subgrantee, its officers, employees, subcontractors, or agents under this grant.

Subgrantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, OEM, and 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.

Subgrantee 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, OEM, 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.

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N. Copyright and Patents.

1. Copyright. If this agreement or any program funded by this agreement results in a copyright, OEM and the U.S. Department of Homeland Security reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and 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 Subgrantee, or its contractor or subcontractor, purchases ownership with grant support.
2. Patent. If this agreement or any program funded by this agreement results in the production of patentable items, patent rights, processes, or inventions, the Subgrantee or any of its contractors or subcontractors shall immediately notify OEM. OEM will provide the Subgrantee with further instruction on whether protection on the item will be sought and how the rights to the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

O. No Implied Waiver, Cumulative Remedies. The failure of OEM to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

P. Governing Law; Venue; Consent to Jurisdiction. 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 (collectively, "Claim") between OEM (and/or any other agency or department of the State of Oregon) and Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Subgrantee, by execution of this agreement, hereby consents to the In Personam Jurisdiction of said courts.

Q. Notices. Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to Subgrantee or OEM at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

R. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of OEM, Subgrantee, and their respective successors and assigns, except that Subgrantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of OEM.

S. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section I.H (Administrative Requirements, Retention and Access to Records, and Audits); Section I. I (Procurement Standards); Section I. J (Property/Equipment Management and Records Control, and Retention of Records); Section I.L (Reports); and Section I.M (Indemnification).

T. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

U. Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

II. Subgrantee Compliance and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Subgrantee certifies by accepting grant funds that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. (This certification is required by 28 CFR Part 1471.) Subgrantees shall establish procedures to provide for effective use and/or dissemination of the Excluded Parties List (<http://www.epls.gov/>) to assure that their contractors are not in violation of the nonprocurement debarment and suspension common rule.
- B. Standard Assurances and Certifications Regarding Lobbying. Subgrantee is required to comply with 44 CFR Part 18, New Restrictions on Lobbying (http://www.access.gpo.gov/nara/cfr/waisidx_07/44cfr18_07.html). The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. Subgrantee understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of GPD.
- C. Compliance with Applicable Law. The Subgrantee agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this agreement, including but not limited to:
1. Administrative Requirements set forth in 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 2 CFR Part 215, Institutions of Higher Educations, Hospitals, and Other Non-Profit Organizations; and the U.S. Department of Homeland Security's Financial Management Guide.
 2. Cost Principles set forth in 2 CFR Part 225, State and Local Governments; Part 220, Educational Institutions; Part 230, Non-Profit Organizations; and Federal Acquisition Regulation Sub-part 31.2, Contracts with Commercial Organizations.
 3. Audit Requirements set forth in OMB Circular A-133, Audits of States, Local governments, and Non-Profit Organizations.
 4. The provisions set forth in 44 CFR Part 7, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 9, Floodplain Management and Protection of Wetland Procedures; Part 10, Procedures for Implementing the National Environmental Policy Act; and Federal laws or regulations applicable to Federal assistance programs.
 5. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646).
 6. Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat.97, approved December 31, 1976.
 7. Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.)
 8. National Environmental Policy Act of 1969, 42 USC 4321 et seq.
 9. Flood Disaster Protection Act of 1973, 42 USC 4001 et seq.
 10. Clean Air Act, 42 USC 7401 et seq.
 11. Clean Water Act, 33 USC 1368 et seq.
 12. Federal Water Pollution Control Act of 1948, as amended, 33 USC 1251 et seq.
 13. Safe Drinking Water Act of 1974, 42 USC 300f et seq.
 14. Endangered Species Act of 1973, 16 USC 1531 et seq.
 15. Wild and Scenic Rivers Act of 1968, as amended, 16 USC 1271 et seq.
 16. Historical and Archaeological Data Preservation Act of 1960, as amended, 16 USC 469 et seq.
 17. Coastal Zone Management Act of 1972, 16 USC 1451 et seq.
 18. Coastal Barrier Resources Act of 1982, 16 USC 3501 et seq.
 19. Indian Self-Determination Act, 25 USC 450f.
 20. Hatch Political Activity Act of 1940, as amended, 5 USC 1501 et seq.
 21. Animal Welfare Act of 1970, 7 USC 2131 et seq.
 22. Demonstration Cities and Metropolitan Development Act of 1966, 42 USC 3301 et seq.
 23. Federal Fair Labor Standards Act of 1938 (as appropriate), as amended, 29 USC 201 et seq.

SUBGRANTEE COPY

D. Certification of Non-discrimination.

1. The Subgrantee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this agreement on the basis of race, color, age, religion, national origin, handicap, or gender. The Subgrantee, and all its contractors and subcontractors, assures compliance with the following laws:
 - a. Non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended;
 - b. Title IV of the Civil Rights Act of 1964, as amended;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended;
 - d. Title II of the Americans with Disabilities Act (ADA) of 1990,
 - e. Title IX of the Education Amendments of 1972;
 - f. The Age Discrimination Act of 1975;
 - g. The Department of Justice Nondiscrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G;
 - h. The Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.
2. In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, handicap or gender against the Subgrantee or any of its contractors or subcontractors, the Subgrantee or any of its contractors or subcontractors will forward a copy of the finding to the Oregon Military Department, Office of Emergency Management (OEM). OEM will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

E. Civil Rights Compliance. All recipients of federal grant funds are required, and Subgrantee agrees, to comply with nondiscrimination requirements of Title VI of the Civil Rights Act, of 1964, as amended, 42 U.S.C. § 2000d et seq. (prohibiting discrimination in programs or activities on the basis of race, color, and national origin); Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3789d(c)(1) (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, and gender); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination in employment practices or in programs and activities on the basis of disability); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 (prohibiting discrimination in services, programs, and activities on the basis of disability); The Age Discrimination Act of 1975, 42 U.S.C. § 6101-07 (prohibiting discrimination in programs and activities on the basis of age); and Title IX of the Education Amendments of 1972, 20 U.S.C § 1681 et seq. (prohibiting discrimination in educational programs or activities on the basis of gender).

F. Equal Employment Opportunity Program. *Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000 et seq.* – No person on the grounds of race, color or national origin will be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program or activity receiving Federal financial assistance. The Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program as required by this section will be in effect on or before the effective date of this agreement.

If required to formulate an Equal Employment Opportunity Program (EEOP), the Subgrantee must maintain a current copy on file which meets the applicable requirements.

G. Services to Limited English Proficient (LEP) Persons. Subgrantees are required to comply with several federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended. These laws prohibit discrimination on the basis of race, color, religion, national origin, and sex in the delivery of services. National origin discrimination includes discrimination on the basis of limited English proficiency. To ensure compliance with Title VI, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. For additional information, please see <http://www.lép.gov>.

SUBGRANTEE COPY

H. Environmental and Historic Preservation.

1. Subgrantee shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Subgrantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. Subgrantee shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings that are 50 years old or greater. Subgrantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Subgrantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Subgrantee will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office.
2. For any of the Subgrantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Subgrantee, upon specific request from the U.S. Department of Homeland Security, agrees to cooperate with the U.S. Department of Homeland Security in any preparation by the U.S. Department of Homeland Security of a national or program environmental assessment of that funded program or activity.

I. Certification Regarding Drug Free Workplace Requirements. Subgrantee certifies that it will provide a drug-free workplace. There are two general requirements if you are a recipient other than an individual.

1. First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. Briefly, those measures are to:
 - a. Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see Sec. 83.205 through 83.220); and
 - b. Take actions concerning employees who are convicted of violating drug statutes in the workplace (see Sec. 83.225).
2. Second, you must identify all known workplaces under your Federal awards (see Sec. 83.230).

Additional information can be referenced at:
http://www.access.gpo.gov/nara/cfr/waisidx_04/28cfrv2_04.html.

III. Suspension or Termination of Funding

The Oregon Military Department, Office of Emergency Management may suspend funding in whole or in part, terminate funding, or impose another sanction on a State Homeland Security Grant Program recipient for any of the following reasons:

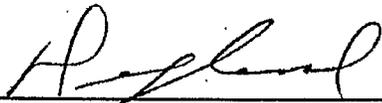
- A. Failure to comply substantially with the requirements or statutory objectives of the State Homeland Security Grant Program guidelines issued thereunder, or other provisions of federal law.
- B. Failure to make satisfactory progress toward the goals and objectives set forth in the approved Project Justification(s).
- C. Failure to adhere to the requirements of the grant award and standard or special conditions.
- D. Proposing or implementing substantial plan changes to the extent that, if originally submitted, the application would not have been selected.
- E. Failing to comply substantially with any other applicable federal or state statute, regulation, or guideline. Before imposing sanctions, the Office of Emergency Management will provide reasonable notice to the Subgrantee of its intent to impose sanctions and will attempt to resolve the problem informally.

SUBGRANTEE COPY

IV. Subgrantee Representations and Warranties

Subgrantee represents and warrants to OEM as follows:

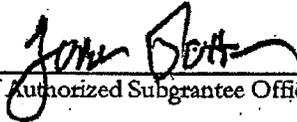
- A. Existence and Power. Subgrantee is a political subdivision of the State of Oregon. Subgrantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- B. Authority, No Contravention. The making and performance by Subgrantee of this Agreement (a) have been duly authorized by all necessary action of Subgrantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Subgrantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subgrantee is a party or by which Subgrantee or any of its properties are bound or affected.
- C. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Subgrantee and constitutes the legal, valid, and binding obligation of Subgrantee, enforceable in accordance with its terms.
- D. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subgrantee of this Agreement.



11/17/08

David Cassel, Domestic Preparedness Manager
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
(503) 378-2911 ext 22226

Date



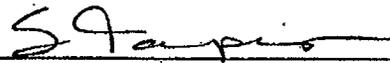
11-08-08

Signature of Authorized Subgrantee Official

Date

Tom Potter, Mayor

Name/Title



11-10-08

Signature of Authorized Fiscal Representative of Subgrantee Agency

Date

Shell Tompkins, Sr. Management Analyst

Name/Title