



RESOLUTION 2013-050

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE 2013 INTERGOVERNMENTAL AGREEMENT (IGA) WITH WASHINGTON COUNTY FOR THE PURPOSES OF CONTINUED 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 continuing the 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 sign the 2013 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 sign the 2013 agreement with Washington County, attached as Exhibit A.

Section 2. This Resolution shall take effect immediately upon its passage by the Council and signature by the Mayor.

Duly passed by the City Council this 3rd day of September 2013.


Bill Middleton, Mayor

Attest:


Sylvia Murphy, MMC, City Recorder

INTERGOVERNMENTAL AGREEMENT

Between

WASHINGTON COUNTY, OREGON

and

THE CITY OF SHERWOOD, OREGON

THIS IS an intergovernmental agreement (Agreement) between Washington County (County) and the city of Sherwood (City) entered into pursuant to the authority granted in Oregon Revised Statutes (ORS) Chapter 190 for the coordination of activities related to 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 \$2,157,259 in Fiscal Year 2012 to the state of Oregon (State) for distribution to the Portland Urban Area (PUA); and

WHEREAS, the State awarded UASI Grant #12-170 (CFDA #97.008) to the city of Portland, Bureau of Emergency Management (PBEM), as subgrantee, for Fiscal Year 2012 in the amount of \$2,049,396, a copy of which is attached to this Agreement and incorporated herein as Exhibit A; and

WHEREAS, UASI Grant #12-170 is intended to increase the capabilities of the PUA, which includes jurisdictions, agencies, and organizations in Multnomah, Clackamas, Columbia, and Washington counties in Oregon and Clark County in Washington, to prevent, protect against, respond to, and recover from threats and acts of terrorism; and

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

WHEREAS, PBEM, 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, PBEM, 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 of Portland and all other PUA jurisdictions, agencies, and organizations that receive direct benefit from UASI grant purchases are required to comply with all terms of the UASI Grant # 12-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds; and

WHEREAS, the city of Portland has entered into an agreement with Washington County to secure the County's commitment to follow the city of Portland-developed procurement, delivery, reimbursement, and reporting procedures, to ensure its compliance with all terms of the grant, and to obligate it to coordinate with and obtain similar assurances from directly benefiting jurisdictions, agencies, and organizations within the County (sub-recipients).

NOW, THEREFORE, the parties agree as follows:

1. **The County agrees:**

- a) To coordinate grant-related procurement, reimbursement, and reporting activities with the City consistent with the processes developed by the city of Portland to manage those activities.
- b) To serve as the point of contact for all requests made by the City and to be responsible for submitting all purchase requests to the city of Portland on behalf of the City.
- c) To maintain a sub-recipient monitoring plan in compliance with the requirements set forth in the most recent versions of applicable federal regulations and Office of Management and Budget (OMB) circulars.
- d) To ensure the City maintains compliance with the terms of this Agreement and UASI Grant #12-170.

2. **The City agrees:**

- a) That it has read the award conditions and certifications for UASI Grant #12-170, 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 all city of Portland and State financial management 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 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) To comply with all city of Portland and State procurement requirements, including competitive bid processes as outlined in Portland City Code (PCC) and Oregon Revised Statutes (ORS). A nonexclusive list of code and statutes commonly applicable to procurement include:
- i. PCC Chapter 5.33 (Goods and Services) and PCC Chapter 5.68 (Professional, Technical and Expert Service Contracts).
 - ii. ORS 279A (Public Contracting – General Provisions) and ORS 279B (Public Contracting – Public Procurements).
- d) That all equipment, supplies, and services provided by the city of Portland are as described in the approved grant budget documents, which the City has seen.
- e) That regardless of how it is procured, all equipment and supplies purchased shall be owned by the City until disposition takes place. The City shall be responsible for inventory tracking, maintenance and storage while in possession of such equipment and supplies.
- f) That regardless of who the owner is, all equipment purchased with grant funds will be made available to all eligible regional partners per 44 CFR 13.32(c)(2). All reasonable requests must be met when sufficient notice is given and no reasonable conflict exists. Owners may not charge “rental” fees for equipment, but may seek reimbursement for normal expendables (not already covered by grant funds) such as fuel, vehicle damage, maintenance for wear and tear, etc., when appropriate.
- g) To comply with all property and equipment tracking and monitoring processes required by the grants, this Agreement, the city of Portland, and the State, and 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. The list should include, but is not limited to, status, asset number, funding source, date of purchase, equipment description, serial number, and location 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 and OMB Circular

A-133. An A-133 compliance supplement on transfer and disposition reporting can be found on the Whitehouse website:
http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2011/pt3.pdf. The City 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.

- h) That any request or invoice it submits for reimbursement of costs is consistent with the items identified in the approved grant budget documents.
- i) That it understands and accepts full financial responsibility and may not be reimbursed for costs incurred which have not been approved by the city of Portland, the State, and the U.S. Department of Homeland Security, FEMA Grant Programs Directorate.
- j) That it will not deviate from the items listed in the approved grant budget documents without first securing written approval from the city of Portland.
- k) 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."
- l) That all financial records, supporting documentation and all other records pertinent to this grant or agreements under this grant shall be retained by the City following termination, completion or expiration of this Agreement for purposes of state of Oregon or federal examination and audit, as established by federal, state or city of Portland retention schedules (whichever is longer). Currently, the city of Portland's retention requirement for these documents is 10 years. A nonexclusive list of codes and statutes commonly applicable to retention include:
 - i. City of Portland Retention Schedules, Section 4808
<http://www.portlandonline.com/auditor/index.cfm?c=27183&a=7949>
 - ii. OAR 166-200-0050(17)
 - iii. 44 CFR Part 13.42
- m) 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.
- n) 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.

- o) To comply with National Incident Management System (NIMS) objectives identified as requirements by the State and certify that the City is registered with the State as being NIMS compliant.
- p) 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.
- q) To comply with federal guidelines concerning exclusions for vendors by verifying that a vendor is not excluded from receiving federal funds prior to any expenditure made and record of verification is maintained. Currently, verification can be made at the System for Award Management site – www.sam.gov.
- r) To provide timely compliance with all reporting obligations required by the grant's terms and the city of Portland.
- s) To provide the city of Portland and the County with Performance and Program Reports, Financial Reimbursement Reports, and Audit Reports when required by the city of Portland and in the form required by the city of Portland.
 - i. Performance Reports and Asset Inventory Reports are due to the city of Portland and the County biannually on June 15 and December 15 during the term of the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
 - ii. Results of the City's OMB Circular A-133 report are due to the city of Portland and the County within six months of the City's receipt of the report, along with a corrective action plan (if applicable).
 - iii. Financial Reimbursement Reports are due no less frequently than quarterly during the term of the grant agreement. Late Financial Reimbursement Reports could result in suspension and/or termination of the grant.
 - iv. Per UASI Grant #12-170, Part II, Section H.3.b., reimbursement for expenses may be withheld if Performance Reports are not submitted by the specified dates or are incomplete.
- t) 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 of Portland and State. Per UASI Grant #12-170, Section H.3.c., 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 dates, times, and places of travel, and the actual expenses or authorized rates incurred.

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

The city of Portland'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>

- u) To comply with all applicable laws, regulations, program guidance and guidelines of the state of Oregon, the Federal Government, and Oregon Emergency Management (OEM) in the performance of this Agreement, including but not limited to those listed in Grant #12-170, Part III. Subgrantee Compliance and Certifications.
- v) 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 upon the end date of the agreement between the city of Portland and the State (Grant #12-170), 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 grant, the agreement between the State and 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 grant 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 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, 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.**
 - 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 the County, 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 the City, its officers, employees and agents in the performance of this agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall indemnify, defend and hold harmless the City from and against all liability, loss and costs arising out of or resulting from the acts of the County, its officers, employees and agents in the performance of this agreement.
 - b) The City shall take all reasonable steps to cause its contractor(s) or subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save, and hold harmless OEM and its officers, employees, and agents ("Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or

omissions of the City's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims

- c) The City shall require its contractor(s) or subcontractor(s) to obtain insurance in amounts required by OEM, not to exceed OEM's limits of liability under the Oregon Tort Claims Act, and shall provide that the state of Oregon, OEM, and their officers, employees, and members are named as Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.
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 term, except as specifically noted herein. 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. City acknowledges and agrees that the obligations City assumes under this agreement benefit, and may be enforced by, the city of Portland, and the Oregon Office of Emergency Management.
 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-12 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. **Human Trafficking (2 CFR Part 175).** The City, employees, contractors and sub-recipients under this Agreement and their respective employees may not:
 - i. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;

- ii. Procure a commercial sex act during the period of time the award is in effect; or
- iii. Use forced labor in the performance of the subgrant or subgrants under the award.

The City must inform the city of Portland, the County, and OEM immediately of any information the City receives from any source alleging a violation of any of the above prohibitions in the terms of this IGA. OEM may terminate Grant #12-170, without penalty, for violation of these provisions. OEM's right to terminate Grant #12-170 unilaterally, without penalty, is in addition to all other remedies under Grant #12-170.

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

Washington County

Sr. Deputy County Admin.

Rod Rice

Rod Rice

Date 7/22/13

APPROVED AS TO FORM

Alan M. Fisher

Date July 18, 2013

Attorney

APPROVED WASHINGTON COUNTY
BOARD OF COMMISSIONERS

MINUTE ORDER # 13-229

DATE 8-6-13

BY Barbara Hejtmancik
CLERK OF THE BOARD

City of Sherwood

Date _____

APPROVED AS TO FORM

Attorney

Date _____

City Fiscal Contact

Date _____

Title

Telephone Number

E-Mail Address

Address

DUNS# _____

CAGE CODE# _____



INTERGOVERNMENTAL AGREEMENT

Between

THE CITY OF PORTLAND, OREGON

And

Washington County

THIS IS an Intergovernmental Agreement (IGA) between the City of Portland ("City") and Washington County ("Agency") entered into pursuant to the authority granted in 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 (DHS), Federal Emergency Management Agency (FEMA) Grant Programs Directorate, provided UASI grant funding in the amount of \$2,049,396 in Fiscal Year 2012 to the State of Oregon ("State"), acting by and through the Oregon Military Department, Office of Emergency Management (OEM) for distribution to the Portland Urban Area (PUA); and

WHEREAS, the State awarded UASI Grant #12-170 to the City of Portland, Bureau of Emergency Management (PBEM), as Grantee, for Fiscal Year 2012 in the amount of \$2,049,396, a copy of which is attached to this Agreement and incorporated herein as Exhibit A; and

WHEREAS, UASI Grant #12-170 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, as well as the Port of Portland and TriMet, 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, PBEM, 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, PBEM, 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 #12-170 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 (i.e., "sub-recipients") 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 Agency. Such authorization, however, does not guarantee payment for the Agency. The State requires documentation invoicing by the Agency, to the City, and compliance with the Agency's purchasing practices, the City's purchasing practices and any applicable state and federal rules and regulations prior to approval of payments.
- b) Because there is no IGA between the City and the sub-recipients of the Agency, the Agency will be the point of contact for all requests made by their sub-recipients. The Agency will be responsible for submitting all purchase requests on behalf of their sub-recipients to the City.
- c) When the City has purchased goods or services for the Agency or the Agency's sub-recipient arrangements for delivery will be made between the parties and the Agency or the Agency's sub-recipient shall be the Owner of said goods or services and shall be responsible for complying with all applicable requirements as outlined in Code of Federal Regulations (CFR) and Office of Management and Budget (OMB) Circulars.

2. The Agency agrees:

- a) That it has read the award conditions and certifications for Grant #12-170, 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 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 and Office of Management and Budget 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) To comply with all City and State procurement requirements, including competitive bid processes as outlined in Portland City Code (PCC) and Oregon Revised Statutes (ORS). A nonexclusive list of code and statutes commonly applicable to procurement include:
 - i. PCC Chapter 5.33 (Goods and Services) and PCC Chapter 5.68 (Professional, Technical and Expert Service Contracts).
 - ii. ORS 279A (Public Contracting – General Provisions) and ORS 279B (Public Contracting – Public Procurements).
- d) That all equipment, supplies, and services provided by the City are as described in the approved grant budget documents.
- e) That regardless of how it is procured, all equipment and supplies purchased shall be owned by the Agency or the Agency's sub-recipient until disposition takes place. The Agency or the Agency's sub-recipient shall be responsible for inventory tracking, maintenance and storage while in possession of such equipment and supplies.

- f) That regardless of who the Owner is, all equipment purchased with grant funds will be made available to all eligible regional partners per 44 CFR 13.32(c)(2). All reasonable requests must be met when sufficient notice is given and no reasonable conflict exists. Owners may not charge "rental" fees for equipment, but may seek reimbursement for normal expendables (not already covered by grant funds) such as fuel, vehicle damage, maintenance for wear and tear, etc., when appropriate.
- g) 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, status, asset number, funding source, date of purchase, equipment description, serial number, and location 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 and OMB Circular A-133. An A-133 compliance supplement on transfer and disposition reporting can be found on the Whitehouse website: http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2011/pt3.pdf
The Agency or the Agency's sub-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.
- h) That any request or invoice it submits for reimbursement of costs is consistent with the items identified in the approved grant budget documents.
- i) 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.
- j) That it will not deviate from the items listed in the approved grant budget documents without first securing written approval from the City.
- k) 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."
- l) That all financial records, supporting documentation and all other records pertinent to this grant or agreements under this grant shall be retained by

the Agency following termination, completion or expiration of this Agreement for purposes of State of Oregon or Federal examination and audit, as established by Federal, State or City retention schedules (whichever is longer). Currently, the City of Portland's retention requirement for these documents is 10 years. A nonexclusive list of code and statutes commonly applicable to retention include:

- i. City of Portland Retention Schedules, Section 4808
<http://www.portlandonline.com/auditor/index.cfm?c=27183&a=7949>
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- m) 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.
- n) Not to supplant its local funds with federal funds but rather 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.
- o) To comply with National Incident Management System (NIMS) objectives identified as requirements by the State and certify that the Agency and any sub-recipients of the Agency are registered with the State as being NIMS compliant.
- p) 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.
- q) To comply with federal guidelines concerning exclusions for vendors by verifying that a vendor is not excluded from receiving federal funds prior to any expenditure made and record of verification is maintained. Currently, verification can be made at the System for Award Management site – www.sam.gov.
- r) To timely comply with all reporting obligations required by the Grant's terms and the City.
- s) To provide the City with Performance and Program Reports, Financial Reimbursement Reports and Audit Reports when required by the City and in the form required by the City.
- i. Performance Reports and Asset Inventory Reports are due to the City 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. Results of the Agency's OMB Circular A-133 report are due to the City within six months of the Agency's receipt of the report, along with a corrective action plan (if applicable).
 - iii. 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.
 - iv. Per UASI Grant #12-170, Part II, Section H.3.b., reimbursement for expenses may be withheld if Performance Reports are not submitted by the specified dates or are incomplete.
- t) 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 #12-170, Section H.3.c., 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 dates, times, and places of travel, and the actual expenses 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>

- u) To develop a sub-recipient monitoring plan that shall be in compliance with the requirements set forth in the most recent versions of applicable CFR and OMB Circulars.
- v) To maintain a list of all sub-recipients of the Agency, and insure that the entities on that list are in compliance with the terms of this Agreement, and Exhibit A. The list of sub-recipients shall be made available to the City by the Agency upon execution of this IGA, and the Agency shall alert the City to any changes in the list within a reasonable amount of time.

- w) 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 those listed in Grant #12-170, Part III. Subgrantee Compliance and Certifications.
 - x) 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 upon the end date of the agreement between the City and the State (Grant #12-170), 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 Agency's failure or inability to comply with the provisions of the grants or the Agreement, the Agency will be liable to the City for the full cost of any equipment, materials, or services provided by the City to the Agency, and for 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.

- a. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the Agency 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 the Agency, its officers, employees and agents in the performance of this agreement. 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 the Agency 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.
- b. The Agency shall take all reasonable steps to cause its contractor(s) or subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents ("Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims
- c. The Agency shall require its contractor(s) or subcontractor(s) to obtain insurance in amounts required by OEM, not to exceed OEM's limits of liability under the Oregon Tort Claims Act, and shall provide that the State of Oregon, OEM, and their officers, employees and members are named as Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.

11. **Third Party Beneficiaries.** The City and the Agency 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-12 UASI program grant and that it is the entire agreement between them relative to that grant.
14. **Workers' 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. **Human Trafficking (2 CFR Part 175).** The Agency, employees, contractors and sub-recipients under this Agreement and their respective employees may not:
 - o Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 - o Procure a commercial sex act during the period of time the award is in effect; or
 - o Use forced labor in the performance of the subgrant or subgrants under the award.

The Agency must inform the City and OEM immediately of any information the Agency receives from any source alleging a violation of any of the above prohibitions in the terms of this IGA. OEM may terminate Grant #12-170, without penalty, for violation of these provisions. OEM's right to terminate Grant #12-170 unilaterally, without penalty, is in addition to all other remedies under Grant #12-170. The Agency must include these requirements in any subgrant made to public or private entities.

17. **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.

- 18. 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 Agency shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Agency hereunder.

City of Portland

Date _____

APPROVED AS TO FORM

Attorney

Date _____

Washington County

Date _____

APPROVED AS TO FORM

Attorney

Date _____

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
URBAN AREA SECURITY INITIATIVE GRANT PROGRAM
CFDA # 97.008**

GRANT AWARD CONDITIONS AND CERTIFICATIONS

PROGRAM NAME:	UASI FY 2012	GRANT NO:	# 12-170
SUBGRANTEE:	City of Portland	FEDERAL AWARD:	\$2,049,396
ADDRESS:	Bureau of Emergency Management 1001 SW 5th Ave., Suite 650 Portland, OR 97204	AWARD PERIOD:	4/1/13 thru 5/31/14
PROGRAM CONTACT:	Carmen Merlo carmen.merlo@portandoregon.gov	TELEPHONE:	(503) 823-2691
FISCAL CONTACT:	Shelli Tompkins shelli.tompkins@portandoregon.gov	TELEPHONE:	(503) 823-4187

BUDGET

Equipment	
CBRNE Incident Response Vehicles	\$111,000
CBRNE Logistical Support	\$88,000
CBRNE Operational/Search and Rescue	\$598,476
Information Technology	\$217,919
Interoperable Communications	\$42,000
Other Authorized Equipment	\$31,500
Personal Protective Equipment	\$25,000
Exercises	\$50,000
Planning	\$715,216
Training (ODP-approved)	\$67,815
Administration	\$102,470
Total	\$2,049,396

GRANT AWARD AGREEMENT AND PROVISIONS

I. Provisions of Award

- A. Agreement Parties. This Agreement is between the State of Oregon, acting by and through the Oregon Military Department, Office of Emergency Management (OEM) and the Subgrantee.
- B. Effective Date. This Agreement shall become effective on the date this Agreement has been fully executed by every party. Agreement termination shall not extinguish or prejudice OEM's right to enforce this Agreement with respect to any default by Subgrantee that has not been cured.
- C. Source of Funds. Payment for this Program will be from the Fiscal Year 2012 Urban Area Security Initiative Grant Program.
- D. Merger Clause; Waiver. This Agreement and referenced documents constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modifications 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.
- E. Acknowledgment. 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 any or all of the withholding of reimbursement, the termination or suspension of the agreement, denial of future grants, or damages to OEM.

TERMS AND CONDITIONS

II. Conditions of Award

- A. The Subgrantee agrees that all allocations and use of funds under this Agreement will be in accordance with the FY2012 Homeland Security Grant Program Funding Opportunity Announcement (FOA), the requirements of which are incorporated into this Agreement by this reference, 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 investment justification contained in the grant application materials and budget will be grounds for immediate suspension or termination of this Agreement.
- B. 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.
- C. By accepting FY 2012 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 Resource Center at <http://www.fema.gov/emergency/nims/>.
- D. Administrative Requirements, Retention and Access to Records, and Audits.
 1. Administrative Requirements. The Subgrantee agrees to comply with all financial management and procurement requirements (Section E), 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), the Office of Management and Budget (OMB) Circulars, Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations. A nonexclusive list of regulations commonly applicable to DHS grants includes:
 - a. Administrative Requirements. 44 CFR Part 13 (State and Local Governments).
 - b. Cost Principles. 2 CFR Part 225 (State, Local, and Tribal Governments) and 48 CFR Federal Acquisition Regulations (FAR) Part 31.2 (Contracts with Commercial Organizations).
 - c. Audit Requirements. OMB Circular A-133.

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 until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) an extended period as established under 44 CFR 13.42. 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.** Subgrantee acknowledges and agrees, and Subgrantee will require its subrecipients, contractors, successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State, Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subgrantee and any subrecipients must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. 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 the Subgrantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, the 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 the Subgrantee expends less than \$500,000 in its fiscal year in Federal funds, the 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 IID.3 herein.
5. **Audit Costs.** Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If the 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.

E. Procurement Requirements (44 CFR Part 13.36).

1. The Subgrantee shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C).
2. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. **All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to the Subgrantee.** Justification for sole-source procurement in excess of \$100,000 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. Interagency agreements between units of government are excluded from this provision.
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, 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.
4. The Subgrantee agrees that, to the extent it uses contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

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

1. **Property/Equipment Management and Records Control.** The Subgrantee agrees to comply with all requirements set forth in 44 CFR Part 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.
 - b. The 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. 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.
 - e. Adequate maintenance procedures must be developed to keep the property/equipment in good condition.
 - f. If the Subgrantee is authorized to sell the property/equipment, proper sales procedures must be established to ensure the highest possible return.
 - g. Subgrantee agrees to comply with 44 CFR Part 13.32.e when original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
 - h. The 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".
 - i. The Subgrantee shall pass on property/equipment management requirements that meet or exceed the requirements outlined above for all subcontractors, consultants, and the subgrantees who receive pass-through funding from this Agreement.
2. Retention of Property/Equipment Records. Records for property/equipment shall be retained for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property/equipment and supplies purchased with funds made available under the Urban Area Security Initiative Grant Program 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 Urban Area Security Initiative Grant Program.

G. Funding.

1. Matching Funds. This Grant does not require matching funds.
2. Allowable Costs. The Subgrantee agrees that all allocations and use of funds under this Agreement will be in accordance with the Fiscal Year 2012 Homeland Security Grant Program and FOA.
3. 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 Urban Area Security Initiative Grant Program guidelines.

H. 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, or termination of this Agreement, or both.

1. Performance Reports.

The Subgrantee agrees to submit reports in a form acceptable to OEM on reporting on its progress in meeting its agreed upon strategic goals and objectives. The narrative reports will address specific information regarding the activities carried out under the FY 2012 Urban Area Security Initiative Grant Program and how they address identified project specific strategic goals and objectives.

Performance reports are due to OEM on the last day of each calendar year quarter.

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

2. Biannual Strategy Implementation Report.

The Subgrantee agrees to provide reports to OEM in a form acceptable to OEM to enable OEM to meet its obligation to provide to FEMA the Biannual Strategy Implementation Report (BSIR) to show progress made toward meeting strategic goals and objectives. BSIR completion is due twenty-one days after the end of each BSIR reporting period, July 21 for the reporting period January 1 through June 30; and January 20 for the reporting period of July 1 through December 31.

3. Financial Reimbursement Reports.

- a. In order to receive reimbursement, the Subgrantee agrees to submit a signed Request for Reimbursement (RFR), using a form provided by OEM that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted no later than one month following the end of each calendar year quarter, and a final RFR must be submitted no later than one month following the end of the grant period.
- b. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- c. 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 dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- d. 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 April 1, 2013 or after May 31, 2014.
- e. The Subgrantee shall be accountable for and shall repay to OEM 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.

- 4. Audit Reports.** The Subgrantee shall provide OEM copies of all audit reports pertaining to this Agreement obtained by the Subgrantee, whether or not the audit is required by OMB Circular A-133 (Section II.D.4-5).

I. Contribution: Subcontractor Indemnity and Insurance.

1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
2. With respect to a Third Party Claim for which OEM is jointly liable with the Grantee (or would be if joined in the Third Party Claim), OEM shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OEM on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the

parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OEM had sole liability in the proceeding.

3. With respect to a Third Party Claim for which the Grantee is jointly liable with OEM (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OEM in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of OEM on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of OEM on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
 4. Subgrantee shall take all reasonable steps to cause its contractor(s) or subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims
 5. Subgrantee shall require its contractor(s) or subcontractor(s) to obtain insurance in amounts required by OEM, not to exceed OEM's limits of liability under the Oregon Tort Claims Act, and shall provide that the State of Oregon, OEM, and their officers, employees and members are named as Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.
- J. Time is of the Essence. The Subgrantee agrees that time is of the essence under this Agreement.
- K. 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 (or any other agency or department of the State of Oregon) and the 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. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. **The Subgrantee, by execution of this Agreement, hereby consents to the In Personam Jurisdiction of said courts, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.**
- L. 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 the 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.

- M. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of OEM, the Subgrantee, and their respective successors and assigns, except that the Subgrantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of OEM.
- N. **Survival.** All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section II.D (Administrative Requirements, Retention and Access to Records, and Audits); Section ILE (Procurement Requirements); Section II.F (Property/Equipment Management and Records Control, and Retention of Records); Section II.H (Reports); and Section II.I (Contribution; Subcontractor Indemnity and Insurance).
- O. **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.
- P. **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.

III. Subgrantee Compliance and Certifications

- A. **Debarment, Suspension, Ineligibility and Voluntary Exclusion.** The Subgrantee certifies by accepting funds under this Agreement 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 (44 CFR Part 13.35). The Subgrantee shall establish procedures to provide for effective use and 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.** The Subgrantee is required to comply with 44 CFR Part 18, *New Restrictions on Lobbying*. The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. The Subgrantee understands and agrees that no funds provided under this Agreement may be expended in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government. These lobbying prohibitions can be found at 31 USC § 1352.
- 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.
 - 2. Cost Principles set forth in 2 CFR Part 225 and 48 CFR Federal Acquisition Regulation (FAR) Part 31.2.
 - 3. Audit Requirements set forth in OMB Circular A-133.
 - 4. The provisions set forth in 44 CFR Part 7; Part 9; Part 10; and Federal laws or regulations applicable to Federal assistance programs.
 - 5. The Freedom of Information Act (FOIA), 5. USC § 552 with consideration of State and local laws and regulations regarding the release of information and regulations governing Sensitive Security Information (49 CFR Part 1520).
 - 6. Award Term for Trafficking in Persons set forth in 2 CFR Part 175.
 - 7. Requirements for Drug-Free Workplace set forth in 2 CFR Part 3001.
 - 8. Animal Welfare Act of 1966, as amended, 7 USC § 2131 et seq.
 - 9. Clean Air Act of 1970, as amended, 42 USC § 7401-7671, and Clean Water Act of 1977, as amended, 33 USC § 1251.
 - 10. Protection of Human Subjects, set forth in 45 CFR Part 46.
 - 11. National Flood Insurance Act of 1968, as amended, 42 USC § 4013, pursuant to regulations set forth in 44 CFR Part 63.
 - 12. Flood Disaster Protection Act of 1973, as amended, 42 USC § 4002.
 - 13. Coastal Wetlands Planning, Protection, and Restoration Act of 1990, as amended, 16 USC § 3951, pursuant to regulations set forth in 44 CFR Part 9.
 - 14. USA Patriot Act of 2001, as amended, 8 USC § 1105, 1182, 1189.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

1. **Non-discrimination and Civil Rights Compliance.** The Subgrantee, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964 as amended, and related nondiscrimination regulations in 44 CFR Part 7.
 - b. Title VIII of the Civil Rights Act of 1968, as amended.
 - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12189.
 - d. Age Discrimination Act of 1975, as amended, 42 USC § 6101.
 - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
 - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

If, during the past three years, the Subgrantee has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the Subgrantee must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the OEM. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the Subgrantee, or the Subgrantee settles a case or matter alleging such discrimination, Subgrantee must forward a copy of the complaint and findings to the OEM.

2. **Equal Employment Opportunity Program.** The Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. The Subgrantee must maintain a current copy on file.
3. **Services to Limited English Proficient (LEP) Persons.** The Subgrantee, and any of its contractors and subcontractors agrees to comply with the requirements of Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subgrantee must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

E. Environmental and Historic Preservation.

1. The 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 environmental and historic preservation laws including but not limited to:
 - a. National Environmental Policy Act of 1969, as amended, 42 USC 4321, and related FEMA regulations, 44 CFR Part 10.
 - b. National Historic Preservation Act, 16 USC 470 et seq.
 - c. Endangered Species Act, 16 USC 1531 et seq.
 - d. 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.

2. The Subgrantee shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. The 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. Any

construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.

3. 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. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.
- F. Drug Free Workplace Requirements (2 CFR Part 3001). The Subgrantee agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, as amended, (41 USC § 701 et seq.), which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. The Subgrantee must notify this office if an employee of the Subgrantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.
- G. Classified National Security Information. No funding under this Agreement shall be used to support a contract, subgrant or other agreement for goods or services that will include access to classified national security information if the award recipient has not been approved for and has access to such information. Classified national security information as defined in Executive Order (EO) 12958, as amended, means information that has been determined pursuant to EO 12958 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. See award notification.
- H. Human Trafficking (2 CFR Part 175). The Subgrantee, employees, contractors and subrecipients under this Agreement and their respective employees may not:
1. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 2. Procure a commercial sex act during the period of time the award is in effect; or
 3. Use forced labor in the performance of the subgrant or subgrants under the award.
- The Subgrantee must inform OEM immediately of any information the Subgrantee receives from any source alleging a violation of any of the above prohibitions in this award term. OEM's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. The Subgrantee must include these requirements in any subgrant made to public or private entities.
- I. Fly America Act of 1974. The Subgrantee agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- J. Activities Conducted Abroad. The Subgrantee agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- K. Acknowledgement of Federal Funding from DHS. The Subgrantee agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- L. Copyright (44 CFR Part 13.34). The Subgrantee agrees to comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the Subgrantee grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The Subgrantee shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award.
- M. Use of DHS Seal, Logo and Flags. Subgrantee agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

IV. Suspension or Termination of Funding

OEM may suspend funding in whole or in part, terminate funding, or impose another sanction on an Urban Area Security Initiative Grant Program recipient for any of the following reasons:

- A. Failure to comply substantially with the statutory and administrative requirements or objectives of the Urban Area Security Initiative Grant Program, with the Program guidelines, or with other applicable federal or state laws and regulations.
- B. Failure to make satisfactory progress toward the goals and objectives set forth in the approved Investment Justifications.
- C. Failure to adhere to the requirements of this Agreement and standard or special conditions.
- D. Proposing or implementing substantial plan changes to the extent that, if originally submitted, would not have been funded.
- E. Before imposing sanctions, OEM will provide reasonable notice to the Subgrantee of its intent to impose sanctions and will attempt to resolve the problem informally.

V. Termination of Agreement

- A. OEM may unilaterally terminate all or part of this Agreement or may reduce its scope of work if there is:
 - 1. A reduction in federal funds which are the basis for this Agreement.
 - 2. A material misrepresentation, error, or inaccuracy in Subgrantee's application.
 - 3. A change, modification or interpretation of State or Federal laws, regulations or guidelines that deprives OEM of authority to provide grant funds for the program or provide funds from the planned funding source.
 - 4. A failure by OEM to obtain sufficient funding, appropriation, limitations, allotments or other expenditure authority to allow OEM, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement.
- B. OEM may terminate this Agreement, - immediately upon written notice to Subgrantee, or at such later date as OEM may establish in such notice, if Subgrantee commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement. In its notice, OEM may permit Subgrantee an opportunity to cure the breach, default or failure in such time and on such terms as OEM may specify in such notice.

VI. Subgrantee Representations and Warranties

The Subgrantee represents and warrants to OEM as follows:

- A. **Existence and Power.** The Subgrantee is a political subdivision of the State of Oregon. The 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 the Subgrantee of this Agreement (a) have been duly authorized by all necessary action of the 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 the 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 the Subgrantee is a party or by which the 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 the Subgrantee and constitutes the legal, valid, and binding obligation of the 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 the Subgrantee of this Agreement.

[Handwritten Signature]

5/17/13
Date

Paulina Layton, Mitigation and Recovery Section Director
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062

[Handwritten Signature]

5/8/13
Date

Signature of Authorized Subgrantee Official

[Handwritten Signature]
Charlie Hales, Mayor

Name/Title

APPROVED AS TO FORM
[Handwritten Signature]
CITY ATTORNEY *[Handwritten Initials]*

Approved for Legal Sufficiency:

By Keith L. Kutler by e-mail
Assistant Attorney General

March 28, 2013
Date



MAY 15 2013

ORDINANCE No. 185990

***Accept and appropriate a grant in the amount of \$2,049,396 from the Department of Homeland Security, FY 2012 Urban Areas Security Initiative Grant Program for the purpose of enhancing emergency preparedness through planning, training and equipping emergency responders. (Ordinance)**

The City of Portland ordains:

Section 1. The Council Finds:

- 1. The Department of Homeland Security provides financial assistance to selected urban areas through the FY 2012 Urban Areas Security Initiative (UASI). The City of Portland, in cooperation with regional partners (TriMet, Port of Portland, Multnomah, Clackamas, Washington and Columbia Counties of Oregon and Clark County, Washington) applied for financial assistance to address the unique equipment, training, planning, exercise and operational needs of large urban areas.**
- 2. The Department of Homeland Security has designated Portland, Oregon as the core urban area in the State of Oregon. The City of Portland will be eligible for a portion of the \$2,049,396 available to our regional metropolitan area**
- 3. Funds provided under the UASI Grant Program will be granted directly to the States with no less than 80% of the total award going to selected urban areas. Funds will be used and dedicated for equipment, training, planning and exercises. The Portland Urban Area has completed a regional strategy to guide the use of federal homeland security grant funds. The City of Portland Bureau of Emergency Management (PBEM) will administer the Grant for the region.**
- 4. There are no financial match requirements for this Grant.**

NOW THEREFORE, the Council Directs:

- a. The Mayor and Portland Bureau of Emergency Management are authorized to accept the grant from the Department of Homeland Security in the amount of \$2,049,396.**
- b. The Mayor is authorized to provide such information and assurances as are required for the grant period.**
- c. The FY 2012/2013 budget is hereby amended as follows:**

GRANTS FUND

Fund - 217

Business Area – EM00

Bureau Program Expenses – \$500,000

185990

- 000281
- d. The OMF Grants Office is authorized to perform all administrative matters in relation to the grant application, grant agreement or amendments, requests for reimbursement from the grantor, and to submit required online grant documents on the Mayor's behalf.
 - e. The Director of PBEM is authorized to accept on behalf of the City of Portland any subsequent modifications by the Department of Homeland Security for UASI Grant No. 12-170 (EM000025) provided such modifications do not increase the City of Portland's financial obligation or risk. Any modifications that increase the City of Portland's financial obligation or risk must be authorized by the Portland City Council.

Section 2. The Council declares that an emergency exists because a delay would unnecessarily delay the City's ability to perform the activities authorized by the grant. Therefore this ordinance shall be in full force and effect from and after its passage by the Council.

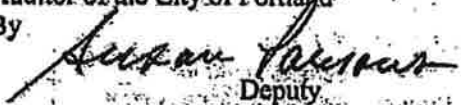
Passed by the Council:

APR 24 2013

Mayor Charlie Hales
Prepared by: Valentine Hellman
Date Prepared: 4/3/2013

LaVonne Griffin-Valade
Auditor of the City of Portland

By


Deputy