

RESOLUTION NO. 5114-12

A RESOLUTION APPROVING AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN WASHINGTON COUNTY AND THE CITY OF TUALATIN FOR THE COORDINATION OF ACTIVITIES RELATED TO THE U.S. DEPARTMENT OF HOMELAND SECURITY'S URBAN AREAS SECURITY INITIATIVE (UASI) GRANT PROGRAM

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

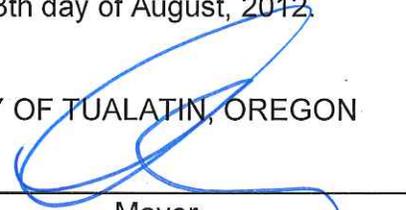
Section 1. The City Council approves and accepts the attached Intergovernmental Agreement between Washington County and the City of Tualatin for the coordination of activities related to the U.S. Department of Homeland Security's UASI Grant Program.

Section 2. The Mayor and the City Recorder are authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Tualatin.

INTRODUCED AND ADOPTED this 13th day of August, 2012.

CITY OF TUALATIN, OREGON

BY

  
\_\_\_\_\_  
Mayor

ATTEST:

BY

  
\_\_\_\_\_  
City Recorder

APPROVED AS TO LEGAL FORM

  
\_\_\_\_\_  
CITY ATTORNEY

## AMENDMENT

This is the first amendment to an existing intergovernmental agreement (IGA) between Washington County, Oregon (County) and the City of Tualatin, Oregon (City) 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. A copy of the IGA, identified as BCC #11-0900, is attached.

### Background

Washington County entered into an agreement with the City on September 6, 2011 for management of FY-10 UASI grant funds awarded to the City. The agreement committed the County to coordinate grant-related procurement, reimbursement and reporting activities with the City and obligated the City to comply with the terms of the FY-10 grant contract and with the grant procurement and reimbursement processes.

The County's agreement with the City is open-ended and remains in effect until the mutual covenants expressed in the agreement have been fully satisfied or until it is terminated due to the failure of one of the parties.

Since adoption of the earlier agreement, the Portland Urban Area has been awarded a FY-11 UASI grant totaling \$4,925,160 and the adopted grant program budget includes funding for the City. The FY-11 UASI grant contract is similar to that of the FY-10 grant and the procurement and reimbursement procedures remain unchanged.

Both parties to the earlier agreement desire to continue the relationships and obligations contained in that agreement, while acknowledging and committing themselves to compliance with the FY-11 UASI grant contract and conditions.

### Agreement

1. The County agrees:

To continue coordination of grant-related procurement, reimbursement, and reporting activities with the City consistent with the processes developed to manage those activities and with the City's prior UASI grant agreement with the County

2. The City agrees:

- a) That it has read the award conditions and certifications for the FY-11 UASI grant, 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 grantee under that grant document; and
- b) To continue compliance with the purchasing and reimbursement processes required by the grants, the City's prior UASI grant agreement with the County and the grant administrator; and

- c) To continue compliance with all other obligations contained in the City's prior UASI grant agreement with the County.
- 3. The parties agree to incorporate by this reference the entire FY-11 UASI grant into this amended IGA, with the specific intent that the City will be obligated to adhere to the FY-11 UASI grant terms, obligations and conditions to the same extent and under the exact same conditions agreed to for the FY-10 UASI grant.
- 4. This amendment shall be effective upon final signature of the parties, and shall continue in effect until all mutual covenants expressed in the original agreement and this amendment have been fully satisfied or until the agreement, as amended, is terminated due to the failure of one of the parties hereto to perform. All other provisions of the original intergovernmental agreement shall remain in effect.

**Washington County**

Andy Duyck      **Andy Duyck**      Date 07/17/12

Chairman Board of Commissioners  
APPROVED AS TO FORM

[Signature]      Date 7/2/12  
Attorney

**City of Tualatin**

[Signature]      Date 8-13-12

APPROVED AS TO FORM

[Signature]      Date 8/13/12  
Attorney

APPROVED WASHINGTON COUNTY  
BOARD OF COMMISSIONERS

MINUTE ORDER # 17-207  
DATE 07/17/12  
BY [Signature]  
CLERK OF THE BOARD

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

***GRANT AWARD CONDITIONS AND CERTIFICATIONS***

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PROGRAM NAME:	FY 2011 UASI	GRANT NO:	# 11-170
SUBGRANTEE:	City of Portland	FEDERAL AWARD:	\$4,925,160
ADDRESS:	Portland Bureau of Emergency Management 1001 SW Fifth Ave, Ste 650 Portland, OR 97204	AWARD PERIOD:	3/1/12 thru 5/31/14
PROGRAM CONTACT:	Carmen Merlo carmen.merlo@portlandoregon.gov	TELEPHONE:	(503) 823-2691
FISCAL CONTACT:	Shelli Tompkins shelli.tompkins@portlandoregon.gov	TELEPHONE:	(503) 823-4187

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**BUDGET**

Equipment	
CBRNE Prevention and Response Watercraft	\$320,000
CBRNE Logistical Support	\$315,000
CBRNE Operational/Search and Rescue	\$25,000
Explosive Device Mitigation	\$43,000
Information Technology	\$44,460
Interoperable Communications	\$256,207
Medical	\$90,000
Other Authorized Equipment	\$109,937
Personal Protective Equipment	\$122,000
Power	\$90,000
Terrorism Incident Prevention	\$1,000,000
Exercises	\$513,696
Planning	\$1,520,539
Training (ODP-approved)	\$229,063
Administration	\$246,258
Total	<u>\$4,925,160</u>

## 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 2011 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 the withholding of reimbursement, the termination or suspension of the Agreement, denial of future grants, and/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 Homeland Security Grant Program guidance and application kit and to expend funds in accordance with the approved 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 this 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. By accepting FY 2011 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/>.

G. 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 H), 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. 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 Part 31.2 (Federal Acquisition Regulations - Contracts with Commercial Organizations).
  - c. Audit Requirements. OMB Circular A-133 (States, Local Governments, and Non-Profit Organizations).
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 six years following termination, completion or expiration of this Agreement 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, Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of the Subgrantee and any contractors or subcontractors of the 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 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 II.G.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.

H. Procurement Standards.

1. The Subgrantee shall use their own procurement procedures provided that the procurement conforms to applicable Federal (44 CFR Part 13.36) and State law (ORS 279A, 279B, 279C) and standards.
2. The Subgrantee agrees to provide the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.) that must be paid to workers in each trade or occupation that is used in performing all or part of this Agreement.
3. 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.
4. 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.

5. 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.

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

1. Property/Equipment Management and Records Control. The Subgrantee agrees to comply with all requirements set forth in 44 CFR Part 13.31-33 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. 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".
- h. 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 the awarding agency. 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.

J. 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 2011 Homeland Security Grant Program guidance and application kit.
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.

K. 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 this Agreement.

1. Performance Reports.

The Subgrantee agrees to submit performance reports on its progress in meeting each of its agreed upon goals and objectives. The narrative reports will address specific information regarding the activities carried out under the FY 2011 Urban Area Security Initiative Grant Program and how they address identified project specific goals and objectives.

Reports are due to OEM by the end of each calendar year quarter.

Any Performance Report that is outstanding for more than one month past the due date may cause the suspension and/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. 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 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 March 1, 2012 or after May 31, 2014.
  - e. The 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. 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.

L. 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, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of the Subgrantee, its officers, employees, subcontractors, or agents under this Agreement.

The 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 Agreement.

The 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 Agreement.

- M. Time is of the Essence. The Subgrantee agrees that time is of the essence under this Agreement.
- N. 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 the Subgrantee, or its contractor or subcontractor, purchases ownership with grant support
- O. 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 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. 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.
- P. 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.
- Q. 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.
- R. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section II.G (Administrative Requirements, Retention and Access to Records, and Audits); Section II.H (Procurement Standards); Section II.I (Property/Equipment Management and Records Control, and Retention of Records); Section II.K (Reports); and Section II.L (Indemnification).
- S. 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.
- T. 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. (This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 44 CFR Part 17.) The Subgrantee 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. The 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](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. The 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 FEMA.
- 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 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 U.S.C. §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).
- 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, 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, disability, or gender. The Subgrantee, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
    - a. Nondiscrimination Regulation 44 CFR Part 7;
    - b. Title II of the Americans with Disabilities Act (ADA) of 1990;

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, disability 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 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. National origin discrimination includes discrimination on the basis of limited English proficiency. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important benefits, programs, information and services. For additional information, 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 (44 CFR Part 10)
  - b. National Historic Preservation Act,
  - c. Endangered Species Act, and
  - 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. 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.

F. Drug Free Workplace Requirements. The 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. 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 44 CFR Part 17.6); and
  - b. Take actions concerning employees who are convicted of violating drug statutes in the workplace.
2. You must identify all known workplaces under your Federal awards.

Additional information can be referenced at: [http://www.access.gpo.gov/nara/cfr/waisidx\\_08/44cfrv1\\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/44cfrv1_08.html).

G. Classified National Security Information. No funding under this award shall be used to support a contract, subaward 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.

H. Human Trafficking. The Subgrantee, employees, contractors and subrecipients under this award 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 award or subawards 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 unilaterally is in addition to all other remedies under this award. The Subgrantee must include these requirements in any subaward made to public or private entities.

#### IV. Suspension or Termination of Funding

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

- A. Failure to comply substantially with the requirements or statutory objectives of the Urban Area Security Initiative 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, 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

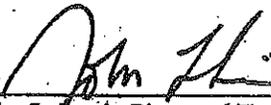
OEM may unilaterally terminate all or part of this Agreement or may reduce its scope of work if there is:

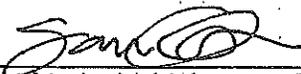
- A. A reduction in federal funds which are the basis for this Agreement.
- B. A material misrepresentation, error, or inaccuracy in Subgrantee's application.
- C. A change, modification or interpretation of State or Federal laws, regulations or guidelines that deprives OEM of authority to provide grant funds for the program or provide funds from the planned funding source.

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.

  
 \_\_\_\_\_ 11 APR 2012  
 John L. Lewis, Plans and Training Section Director Date  
 Oregon Military Department  
 Office of Emergency Management  
 PO Box 14370  
 Salem, OR 97309-5062

  
 \_\_\_\_\_ 3/30/2012  
 Signature of Authorized Subgrantee Official Date

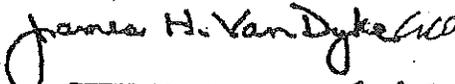
SAM ADAMS / MAYOR  
 \_\_\_\_\_  
 Name/Title

  
 \_\_\_\_\_ 4/4/12  
 Signature of Authorized Fiscal Representative of Subgrantee Agency Date

Shelli Tompkins, Sr. Management Analyst  
 \_\_\_\_\_  
 Name/Title

Reviewed for Legal Sufficiency:

Steven A. Wolf by email \_\_\_\_\_ March 2, 2012  
 Assistant Attorney General APPROVED AS TO FORM Date

  
 CITY ATTORNEY 3-18-12

**INTERGOVERNMENTAL AGREEMENT**

**Between**

**WASHINGTON COUNTY, OREGON**

**and**

**THE CITY OF TUALATIN, OREGON**

THIS IS an intergovernmental agreement (Agreement) between Washington County (County) and the city of Tualatin (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 \$7,178,800 in Fiscal Year 2010 to the state of Oregon (State) for distribution to the Portland Urban Area (PUA); and

WHEREAS, the State awarded UASI Grant #10-170 (CFDA #97.008) to the city of Portland, Office of Emergency Management (POEM), as subgrantee, for Fiscal Year 2010 in the amount of \$6,874,736, a copy of which is attached to this Agreement and incorporated herein as Exhibit A; and

WHEREAS, UASI Grant #10-170 is intended to increase the capabilities of the PUA, which includes jurisdictions, 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, POEM, as Grant Administrator, is required to oversee and coordinate the expenditure of the UASI grant funds and has developed procedures to guide the procurement, delivery, and reimbursement processes; and

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

WHEREAS, the city 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 # 10-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds; and

WHEREAS, the city 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.

NOW, THEREFORE, the parties agree as follows:

1. **The County agrees:**

To coordinate grant-related procurement, reimbursement, and reporting activities with directly benefiting jurisdictions, agencies, and organizations 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 UASI Grant #10-170, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the city of Portland, as grantee, under those grant documents.

b) To comply with all city of Portland and State financial management and procurement requirements, including competitive bid processes, and to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR) and Office of Management and Budget (OMB) circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:

i. Administrative Requirements: 44 CFR Part 13 (State and Local Governments) and 2 CFR Part 215 (Non-Profit Organizations).

- ii. Cost Principles: 2 CFR Part 225 (State, Local, and Tribal Governments); Part 230 (Non-Profit Organizations); and Federal Acquisition Regulations (FAR) Part 31.2 (Contracts with Commercial Organizations).
  - iii. Audit Requirements: OMB Circular A-133.
- c) That all equipment, supplies, and services provided by the city of Portland are as described in the approved grant budget documents, which the City has seen.
  - d) That it will not deviate from the items listed in the approved grant budget documents without first securing written authority from the city of Portland.
  - e) To comply with all property and equipment tracking and monitoring processes required by the grants, this Agreement, the city of Portland, and the State.
  - f) 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, dates of purchase, equipment description, serial numbers, and locations where the equipment is housed or stored. All requirements for the tracking and monitoring of fixed assets are set forth in 44 CFR Part 13.
  - g) To maintain and store all equipment and supplies, provided or purchased, in a manner that will best prolong its life and keep it in good working order at all times.
  - h) That regardless of how it is procured, all equipment and supplies purchased shall be owned by the City until proper disposition takes place. The City shall be responsible for inventory tracking, maintenance, and storage while in possession of such equipment and supplies.
  - i) That any request or invoice it submits for reimbursement of costs is consistent with the items identified in the approved grant budget documents.
  - j) 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, State, and the U.S. Department of Homeland Security, FEMA Grant Programs Directorate.
  - 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 and supporting documentation, and all other records pertinent to this grant or agreements under this grant, shall be retained for a minimum of six years following termination, completion, or expiration of this Agreement for purposes of city of Portland, State, or federal examination and audit.
- 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 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.
- p) To comply with National Incident Management System (NIMS) objectives identified as requirements by the State.
- q) 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.
- 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 with Performance 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 are due to POEM biannually on June 15th and December 15th during the term of the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
  - ii. Financial Reimbursement Reports are due no less frequently than quarterly during the term of the grant agreement. Late Financial Reimbursement Reports could result in the suspension and/or termination of the grant.

iii. Per UASI Grant #10-170, Section K.2.b., reimbursement for expenses may be withheld if performance reports are not submitted by the specified dates or are incomplete.

t) To follow the travel expense and per diem guidelines 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 #10-170, Section K.2.c., reimbursements rates for travel expenses shall not exceed those allowed by the State. 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 expense or authorized rates incurred.

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

The city 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>

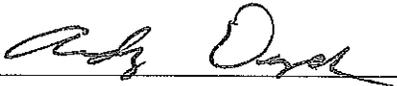
u) To comply with all of its obligations under this Agreement and any applicable, incorporated document or documents.

3. **Effective Date and Duration.** This Agreement shall be effective from the date both parties have signed and shall be terminated on December 31, 2012 unless otherwise extended by the parties in writing or 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.
  - b) 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.
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-10 UASI program grant and that it is the entire agreement between them relative to that grant.
- 14. **Worker's Compensation.** Each party shall be responsible for providing worker's compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027). Neither party shall be required to provide or show proof of any other insurance coverage.
- 15. **Nondiscrimination.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
- 16. **Access to Records.** Each party shall maintain, and shall have access to the books, documents, papers, and other records of the other party which are related to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Copies of applicable records shall be made available upon request. Access to records for Oregon Emergency Management (OEM), 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.
- 17. **Subcontracts and Assignment.** Neither party will subcontract or assign any part of this Agreement without the prior written consent of the other party. Notwithstanding 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

  
\_\_\_\_\_

Date 9-6-11

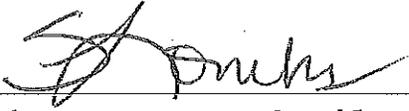
APPROVED AS TO FORM

  
\_\_\_\_\_  
Attorney

Date 9/12/11

APPROVED WASHINGTON COUNTY  
BOARD OF COMMISSIONERS  
MINUTE ORDER # 11-240  
DATE 9-6-11  
BY Barbara Heitmanek  
CLERK OF THE BOARD

City of Tualatin

  
\_\_\_\_\_

City Manager, Sherilyn Lombos

Date 11-14-2011

APPROVED AS TO FORM

  
\_\_\_\_\_

Attorney

Date 11-14-2011