

# CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Clark County Sheriff's Office

**DATE:** February 26, 2015

**REQUEST:** Accept and approve Intergovernmental Agreement (IGA) between The City of Portland, Oregon and Clark County for the Disbursement and Receipt of Urban Area Security Initiative ("UASI") Grant Funds and to accommodate receipt of funds authorized under UASI Grant No. 14-170, awarded by the United States Department of Homeland Security, Office for Domestic Preparedness

**CHECK ONE:**                      X   Consent                           CAO

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## BACKGROUND

The United States Department of Homeland Security (DHS), Office of Domestic Preparedness, has awarded Urban Area Security Initiative Grant Award No. 14-170 to the City of Portland, Oregon, Bureau of Emergency Management in the total amount of \$846,598. A true copy of Grant No. 14-170 is attached. The IGA authorizes the City of Portland as grant administrator to disburse to Clark County as recipient a portion of the funds. In turn, Clark County is authorized to oversee disbursement of a portion of the funds or grant-funded equipment or services to sub-recipients, comprised of non-County emergency services agencies in Clark County. The total to be budgeted to agencies in Clark County has not yet been determined.

These grant monies are intended to increase the capability of critical urban areas to prevent and respond to chemical, biological, radiological, nuclear and explosive events (CBRNE) by providing for the purchase and distribution of specialized equipment, supplies and services to enhance the ability to prevent, deter, respond to and recover from CBRNE events, and in some instances, provide for the reimbursement of funds, for the same purpose, to the Portland, Oregon Urban Area, which includes jurisdictions in Multnomah, Clackamas, Columbia and Washington counties in Oregon and Clark County in Washington.

## COMMUNITY OUTREACH

UASI grant funds are intended to make Clark County and the entire Portland-Vancouver Urban Area safer from acts of terrorism. They therefore help County agencies to accomplish one of their basic functions in ensuring the safety of Clark County citizens.

## BUDGET AND POLICY IMPLICATIONS

The proposed amended interlocal Agreement has no budgetary impact. Equipment and funds will be transferred directly from the City of Portland to the City of Vancouver or CRESA in most cases. As cases do arise in which it is necessary for the Sheriff's Office to receive funds from the City of Portland and pass them through to another agency, the Sheriff's Office will submit a staff report requesting a resource-neutral budget adjustment at that time.

## FISCAL IMPACTS

Yes (see attached form)

No



*mem  
OK  
N*

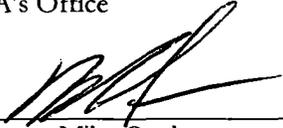
**ACTION REQUESTED**

Accept and approve the attached proposed intergovernmental agreement. Sign both copies.

**DISTRIBUTION**

SO Fiscal, John Lawler  
Auditor's Office, Amanda Miller  
PA's Office

Office of Budget and Information Services  
CRESA, Scott Johnson

  
\_\_\_\_\_  
Name Mike Cooke  
Title Clark County Undersheriff

Approved:   
\_\_\_\_\_  
CLARK COUNTY  
BOARD OF COUNCILORS

March 3, 2015  
SR 038-15

# INTERGOVERNMENTAL AGREEMENT

Between

SH 15-10

**THE CITY OF PORTLAND, OREGON**

And

**Clark County, Washington**

THIS IS an Intergovernmental Agreement (IGA) between the City of Portland ("City") and Clark County, Washington ("Agency") entered into pursuant to the authority granted in Oregon Revised Statutes (ORS) Chapter 190 and Revised Code of Washington (RCW) 39.34, 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 \$846,598 in Fiscal Year 2014 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 #14-170 to the City of Portland, Bureau of Emergency Management (PBEM) for Fiscal Year 2014 in the amount of \$846,598, a copy of which is attached to this Agreement and incorporated herein as Attachment 1 and Exhibits A, B, C and D; and

WHEREAS, UASI Grant #14-170 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 #14-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds; and

WHEREAS, the Regional Disaster Preparedness Organization (RDPO) is the designated organization in the PUA that serves in the capacity of Urban Area Work Group (UAWG) to coordinate program development and decision-making processes for allocating UASI sub-grants, as specified in the "UASI Program Standard Operating Procedure Urban Areas Security Initiative (UASI) Program Management Under the Regional Disaster Preparedness Organization (RDPO)", Exhibit D; and

WHEREAS, the City is entering into agreements with PUA counties and agencies 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 and agencies.

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 invoicing with the appropriate backup documentation 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 (if any), the Agency will be the point of contact for all requests

made by its 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, and the grant agreement.

**2. The Agency agrees:**

- a) That it has read the award conditions and certifications for UASI Grant #14-170; including Exhibits A, B, C and D and 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: 2 CFR 200.21 (OMB Circular A-133).
- c) To comply with all City and State procurement requirements, including the 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 procured by the Agency 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 grant, 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 on an annual basis, using PBEM's Equipment Inventory Report and completing and returning report to PBEM on or before June 30<sup>th</sup>. **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. Additionally, all equipment must have a sticker affixed that visible states "Purchased with funds provided by the U.S Department of Homeland Security."** All requirements for the tracking and monitoring of fixed assets are set forth in 44 CFR Part 13 and 2 CFR 200.21 (OMB Circular A-133). 2 CFR 200.21 (OMB Circular 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](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 keep it safe, most prolong the life and in good working condition at all times.
- h) That any request or invoice it submits for reimbursement of costs will be 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/or 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>
  - 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 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 or contractors by verifying that a vendor or contractor 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](http://www.sam.gov). A copy of this report must be submitted to the City, as part of the documents required for reimbursement requests.
- r) The sub-recipient must use the Federal excess and surplus property database located at <http://gsa.gov/portal/category/21179> in lieu of purchasing new equipment and property, whenever such use is feasible, to reduce project costs. Verification that this search was performed must be submitted to the City, as part of the documents required for reimbursements requests.
- s) To timely comply with all reporting obligations required by the Grant and the City.
- t) To provide the City with Performance and Program Reports, Financial Reimbursement Reports, Asset / Inventory reports and Audit Reports when required by the City and in the form required by the City.
  - i. Performance reports are due to the City on a quarterly basis (April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup>, and January 15<sup>th</sup> during the term of the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
  - ii. Asset / Inventory reports are due to the City on an annual basis, on June 30<sup>th</sup> of each year.
  - iii. Results of the Agency's 2 CFR 200.21 (OMB Circular A-133) report are due to the City fifteen (15) days after the Agency's receipt of the report, along with a corrective action plan (if applicable). Agencies expending \$500,000 or more in Federal awards during their fiscal year, are required to have an A-133 audit, as provided in OMB Circular A-133. A copy of 2 CFR 200.21 (OMB Circular A-133) audit requirements can be found at [http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a133\\_compliance/2014/2014-compliance-supplement.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a133_compliance/2014/2014-compliance-supplement.pdf).
  - iv. 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.
  - v. Per UASI Grant #14-170, Section 5b. Financial Reimbursement Reports, part ii, reimbursement for expenses will be withheld if

Performance Reports are not submitted by the specified dates or are incomplete.

- u) 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 #14-170, Section 5b. Financial Reimbursement Reports, part iii, 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/content/104877>

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>

- v) 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.
- w) To maintain a list of all sub-recipients of the Agency, and ensure that the entities on that list are in compliance with the terms of the Grant Agreement, including Attachment 1 and Exhibits A, B, C and D. The list of sub-recipients shall be made available to the City by the Agency upon execution of this intergovernmental agreement, and the Agency shall immediately inform the City of any changes to the list. If the Agency's sub-recipient is a government entity, then the Agency must have an intergovernmental agreement in place with them and a copy of said agreement must be sent to the City.
- x) 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 UASI Grant #14-170, Exhibit B, Federal Requirements and Certifications, Exhibit C, Sub-agreement Insurance Requirements and Exhibit D, Standard Operating Procedure Urban Areas Security

Initiative (UASI) Program Management Under the Regional Disaster Preparedness Organization (RDPO).

- y) 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 (UASI Grant #14-170), 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 attorney's 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, the City, and their 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 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 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 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, the City, 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 - 2014 UASI program grant (Grant #14-170) 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:
  - Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  - Procure a commercial sex act during the period of time the award is in effect; or
  - 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 #14-170, without penalty, for violation of these provisions. OEM's right to terminate Grant #14-170 unilaterally, without penalty, is in addition to all other remedies under Grant #14-170. 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.** Notwithstanding any goods or services the Agency procures using UASI grant funds received under this IGA, 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

\_\_\_\_\_ Date \_\_\_\_\_  
Attorney

**(Clark County, Washington)**

 \_\_\_\_\_ Date March 3, 2015

APPROVED AS TO FORM

 \_\_\_\_\_ Date 3/3/15  
Attorney

# ATTACHMENT 1

**OREGON MILITARY DEPARTMENT  
OFFICE OF EMERGENCY MANAGEMENT  
URBAN AREA SECURITY INITIATIVE GRANT  
CFDA # 97.008  
CITY OF PORTLAND  
\$846,598  
Grant No: 14-170**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and the **City of Portland**, hereinafter referred to as "Subgrantee," and collectively referred to as the "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2014** and ending, unless otherwise terminated or extended, on **May 31, 2016** (Expiration Date). No Grant Funds are available for expenditures after the Expiration Date. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**

Exhibit B: **Federal Requirements and Certifications**

Exhibit C: **Subcontractor Insurance**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

3. **Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subgrantee an amount not to exceed **\$846,598** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2014 Urban Area Security Initiative (UASI) Grant.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. **Reports.** Failure of 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, termination of this Agreement, or both.

**a. Performance Reports.**

- i. Subgrantee agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of its agreed upon milestones.
- ii. Reports are due to OEM on or before 30 days following each calendar quarter (March 31, June 30, September 30, and December 31).
- iii. Subgrantee may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

**b. Financial Reimbursement Reports.**

- i. To receive reimbursement, Subgrantee must submit a signed Request for Reimbursement (RFR), using a form provided by OEM, that includes supporting documentation for all grant and, if applicable, match 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 on or before 30 days following each subsequent calendar quarter (March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. 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.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subgrantee agrees that no grant or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.

- c. Audit Reports.** Upon request by OEM, Subgrantee shall provide OEM copies of all audit reports pertaining to this Agreement obtained by Subgrantee, whether or not the audit is required by OMB Circular A-133 as described in Section 8.c.i and ii herein.

**6. Disbursement and Recovery of Grant Funds.**

- a. Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subgrantee for the Project, in accordance with the UASI budget approved by OEM and the United States Department of Homeland Security Funding Opportunity Announcement (FOA), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit.
- b. Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subgrantee is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
  - i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.

- ii. Subgrantee is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
- iii. Subgrantee's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. Subgrantee has provided to OEM a RFR in accordance with Section 5.b of this Agreement.

**c. Recovery of Grant Funds.** Any funds disbursed to Subgrantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subgrantee shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subgrantee shall return all Unexpended Funds to OEM within 14 days after the earlier of expiration or termination of this Agreement.

**7. Representations and Warranties of Subgrantee.** Subgrantee represents and warrants to OEM as follows:

**a. Organization and Authority.** Subgrantee is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subgrantee has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subgrantee of this Agreement (1) have been duly authorized by all necessary action of Subgrantee and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subgrantee is a party or by which Subgrantee or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subgrantee of this Agreement.

**b. Binding Obligation.** This Agreement has been duly executed and delivered by Subgrantee and constitutes a legal, valid and binding obligation of Subgrantee, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

**c. No Solicitation.** Subgrantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

**d. NIMS Compliance.** By accepting FY 2014 funds, Subgrantee certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through the OEM at [http://www.oregon.gov/OMD/OEM/Pages/plans\\_train/NIMS.aspx#Oregon\\_NIMS\\_Requirements](http://www.oregon.gov/OMD/OEM/Pages/plans_train/NIMS.aspx#Oregon_NIMS_Requirements).

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

## **8. Records Maintenance and Access; Audit.**

- a. Records, Access to Records and Facilities.** Subgrantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subgrantee acknowledges and agrees, and Subgrantee will require its contractors, subcontractors, sub-recipients (collectively hereafter “contractors”), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), 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 its contractors 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.
- b. Retention of Records.** Subgrantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for 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 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.
- c. Audits.**

  - i. If Subgrantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200.21 (OMB Circular A-133). Copies of all audits must be submitted to OEM within 30 days of completion. If Subgrantee expends less than \$500,000 in its fiscal year in Federal funds, Subgrantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
  - ii. Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If Subgrantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
  - iii. Subgrantee shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subgrantee acknowledges and agrees that any audit costs incurred by Subgrantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subgrantee and the State of Oregon.

## **9. Subgrantee Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance**

- a. Subagreements.** Subgrantee may enter into agreements (hereafter “subagreements”) for performance of the Project. 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).
- i. Subgrantee shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subgrantee shall include with its RFR a list of all procurements issued during the period covered by the report.
  - ii. All subagreements, 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 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.
  - iii. 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.
  - iv. Subgrantee agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- b. Purchases and Management of Property and Equipment; Records.** Subgrantee agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this agreement, whether by Subgrantee or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subgrantee’s property or equipment inventory system.
  - ii. Subgrantee’s property and equipment records shall include: a description of the property or equipment; the manufacturer’s serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
  - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.

- iv. Subgrantee must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subgrantee shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
  - v. Subgrantee must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
  - vi. If Subgrantee is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
  - vii. Subgrantee agrees to comply with 44 CFR Part 13.32.e when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
  - viii. Subgrantee shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
  - ix. Subgrantee shall, and shall require its contractors to, retain, the records described in this Section 9.b. 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 and equipment purchased with Grant Funds shall vest in Subgrantee if Subgrantee provides written certification to OEM that it will use the property and equipment for purposes consistent with the UASI Grant.
- c. **Subagreement indemnity; insurance.** *Subgrantee's subagreement(s) shall require the other party to such subagreements(s) that is not a unit 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 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 other party to Subgrantee's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subgrantee's subagreement(s) from and against any and all Claims.*

Any such indemnification shall also provide that neither Subgrantee's contractor(s) nor any attorney engaged by Subgrantee's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subgrantee's contractor is prohibited from defending State or that Subgrantee's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subgrantee's contractor if State elects to assume its own defense.

Subgrantee shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

## 10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subgrantee, or at such later date as may be established by OEM in such written notice, if:
  - i. Subgrantee fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subgrantee is, for any reason, rendered improbable, impossible, or illegal; or
  - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
  - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
  - iv. The Project would not produce results commensurate with the further expenditure of funds; or
  - v. Subgrantee takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
  - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subgrantee's application.
  
- b. **Termination by Subgrantee.** Subgrantee may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subgrantee in such written notice, if:
  - i. The requisite local funding to continue the Project becomes unavailable to Subgrantee; or
  - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
  
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

## 11. GENERAL PROVISIONS

- a. **Contribution.** 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 OEM or Subgrantee with respect to which the 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. Each 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 a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which OEM is jointly liable with Subgrantee (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 Subgrantee in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of Subgrantee 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 Subgrantee 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, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if OEM had sole liability in the proceeding.

With respect to a Third Party Claim for which Subgrantee is jointly liable with OEM (or would be if joined in the Third Party Claim), Subgrantee 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 Subgrantee 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 Subgrantee 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. Subgrantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. **Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that recipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subgrantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subgrantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to

a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subgrantee acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subgrantee, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

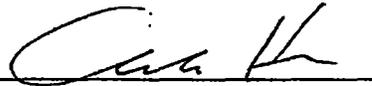
- g. Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subgrantee or OEM at the appropriate address or number set forth on the signature page 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. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. 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.
- h. Governing Law, 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 Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State 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. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. Compliance with Law.** Subgrantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. Insurance; Workers' Compensation.** All employers, including Subgrantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subgrantee shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

- k. Independent Contractor.** Subgrantee shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subgrantee has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subgrantee performs the Project, except as specifically set forth in this Agreement. Subgrantee is responsible for determining the appropriate means and manner of performing the Project. Subgrantee acknowledges and agrees that Subgrantee is not an “officer”, “employee”, or “agent” of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. 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.
- m. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes 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. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subgrantee, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

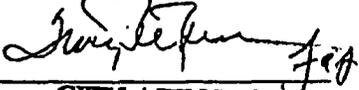
City of Portland

By 

Name CHARLIE HALES, MAYOR  
(printed)

Date 12-15-14

**APPROVED AS TO LEGAL SUFFICIENCY**  
(If required for Subgrantee)

By   
Subgrantee's ~~Legal Counsel~~ **CITY ATTORNEY**

Date 12/3/14

**Subgrantee Program Contact:**

Carmen Merlo  
Director  
City of Portland  
Portland Bureau of Emergency Management  
9911 SE Bush St  
Portland, OR 97266  
503-823-2691  
carmen.merlo@portlandoregon.gov

**Subgrantee Fiscal Contact:**

Shelli Tompkins  
Finance and Grants Manager  
City of Portland  
Portland Bureau of Emergency Management  
9911 SE Bush St  
Portland, OR 97266  
503-823-4187  
shelli.tompkins@portlandoregon.gov

OEM

By 

Matthew T. Marheine  
Plans and Training Section Manager, OEM

Date 12/23/14

**APPROVED AS TO LEGAL SUFFICIENCY**  
(For Grant Funds over \$150,000)

By Keith L. Kutler via email  
Assistant Attorney General

Date November 14, 2014

**OEM Program Contact:**

Sidra Metzger-Hines  
Grants Coordinator  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-2911 extension 22251  
sidra.metzgerhines@state.or.us

**OEM Fiscal Contact:**

Dan Gwin  
Grants Accountant  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-2911 extension 22290  
dan.gwin@state.or.us

## **Exhibit A**

### **Project Description and Budget**

#### **I. Project Description**

Project Title: Urban Area Security Initiative

This project will provide funding for Regional Planning and Organization, Interoperable Communications and Situation Awareness, Regional Incident Response and Recovery and Intelligence and Information Sharing projects to increase capabilities across the Portland Urban Area.

#### **II. Budget**

Administration	\$49,500
Planning	\$332,900
Training	\$60,000
Exercise	\$23,151
CBRNE Logistic Support Equipment	\$90,000
CBRNE Operational Search & Rescue	\$240,095
Interoperable Communications	\$50,952
<b>Total</b>	<b>\$846,598</b>

## EXHIBIT B

### Federal Requirements and Certifications

**I. General.** Subgrantee agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and 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.

### II. Specific Requirements and Certifications

**A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** 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). 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.** 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. 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.** 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, including without limitation:
  - a. Using Grant Funds only as allowed by 44 CFR 13.22 (a) and in accordance with applicable cost principles described in 44 CFR 13.22(b), including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies;
  - b. Actively tracking and monitoring property and equipment purchased by Subgrantee or its contractors in whole or in part with Grant Funds, and 44 CFR Part 13.32(e) when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
2. OMB Circular A-102, Grants and Cooperative Agreements With State and Local Governments.
3. Audit Requirements set forth in 2 CFR 200.21 (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. USA Patriot Act of 2001, as amended, 8 USC § 1105, 1182, 1189.
6. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
7. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
8. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subgrantee may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds.

**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.** 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, 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, 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, Subgrantee must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. 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 Subgrantee, or Subgrantee settles a case or matter alleging such discrimination, Subgrantee must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.

2. **Equal Employment Opportunity Program.** 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. Subgrantee must maintain a current copy on file.
3. **Services to Limited English Proficient (LEP) Persons.** 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. 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 Subgrantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. 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. 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, Subgrantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, 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 Subgrantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, 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. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subgrantee must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

**G. Drug Free Workplace Requirements (2 CFR Part 3001).** 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. Subgrantee must notify this office if an employee of Subgrantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

**H. Human Trafficking (2 CFR Part 175).** 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.

Subgrantee must inform OEM immediately of any information 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. Subgrantee must include these requirements in any subgrant made to public or private entities.

**I. Fly America Act of 1974.** 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.** 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.** 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).** 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, 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. 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.
- N. Personally Identifiable Information (PII).** Subgrantee, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- O. Federal Debt Status.** Subgrantee shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement.

## EXHIBIT C

### Subagreement Insurance Requirements

#### GENERAL.

Subgrantee shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Subgrantee shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subgrantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subgrantee shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subgrantee permit work under a subagreement when Subgrantee is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subgrantee is a Party.

#### TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. **COMMERCIAL GENERAL LIABILITY.**

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

**Bodily Injury, Death and Property Damage:**

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. **AUTOMOBILE Liability Insurance: Automobile Liability.**

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate

limits for “Commercial General Liability” and “Automobile Liability”). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

**Bodily Injury, Death and Property Damage:**

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

**ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor’s activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

**“TAIL” COVERAGE.** If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance, the contractor shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor’s completion and Subgrantee’s acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum “tail “ coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

**NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide 30 days’ written notice to Subgrantee before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**CERTIFICATE(S) OF INSURANCE.** Subgrantee shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a “claims made” basis, the extended reporting period applicable to “tail” or continuous “claims made” coverage.