

**RESOLUTION NO. 2019-31**

**RESOLUTION AUTHORIZING TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF FOREST GROVE, A MUNICIPAL CORPORATION OF THE STATE OF OREGON, BY AND THROUGH ITS FIRE DEPARTMENT (“GRANTEE”), AND THE FOLLOWING: THE CITY OF HILLSBORO, BY AND THROUGH ITS FIRE DEPARTMENT; THE CITY OF CORNELIUS, BY AND THROUGH ITS FIRE DEPARTMENT; TUALATIN VALLEY FIRE AND RESCUE; BANKS FIRE DISTRICT NO. 13; CORNELIUS RURAL FIRE PROTECTION DISTRICT; FOREST GROVE RURAL FIRE PROTECTION DISTRICT; GASTON RURAL FIRE PROTECTION DISTRICT**

**WHEREAS**, Grantee, acting on behalf of themselves and Subrecipients, has applied for an Assistance to Firefighters Grant from the U.S. Department of Homeland Security (“Grant”); and

**WHEREAS**, all Parties are in need of standardized, interoperable SCBA equipment that will protect regional firefighters against the effect of toxic environments and CBRN exposure, and meet current NFPA 1981 SCBA and NFPA 1982 PASS standards (“Equipment”); and

**WHEREAS**, under authority of ORS Chapter 190, Grantee and Subrecipients are authorized to enter into an agreement to cooperate in receiving, distributing, and coordinating the Grant funds to purchase such equipment.

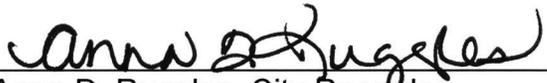
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:**

**Section 1.** The City Council hereby approves the Intergovernmental Agreement (Exhibit A) between City of Forest Grove, a Municipal Corporation of the State of Oregon, By and Through Its Fire Department (“Grantee”), and the following: The City of Hillsboro, By and Through Its Fire Department; The City of Cornelius, By and Through Its Fire Department; Tualatin Valley Fire and Rescue; Banks Fire District No. 13; Cornelius Rural Fire Protection District; Forest Grove Rural Fire Protection District; Gaston Rural Fire Protection District.

**Section 2.** The City Manager or designee is authorized to execute the IGA on behalf of the City.

**Section 3.** This resolution is effective immediately upon its enactment by the City Council.

**PRESENTED AND PASSED** this 10<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 10<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
Peter B. Truax, Mayor

## INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into, by and between the City of Forest Grove, a municipal corporation of the State of Oregon, by and through its Fire Department (“Grantee”), and the following: the City of Hillsboro, by and through its Fire Department; the City of Cornelius, by and through its Fire Department; Tualatin Valley Fire and Rescue; Banks Fire District No. 13; Cornelius Rural Fire Protection District; Forest Grove Rural Fire Protection District; Gaston Rural Fire Protection District (collectively, “Subrecipients”).

### RECITALS

**Whereas**, Grantee, acting on behalf of themselves and Subrecipients, has applied for an Assistance to Firefighters Grant from the U.S. Department of Homeland Security (“Grant”), and

**Whereas**, all Parties are in need of standardized, interoperable SCBA equipment that will protect regional firefighters against the effect of toxic environments and CBRN exposure, and meet current NFPA 1981 SCBA and NFPA 1982 PASS standards (“Equipment”), and

**Whereas**, under authority of ORS Chapter 190, Grantee and Subrecipients are authorized to enter into an agreement to cooperate in receiving, distributing, and coordinating the Grant funds to purchase such equipment,

The Parties agree as follows:

### TERMS AND CONDITIONS

#### 1 Start and End dates.

The **effective date** of this Agreement is: the last date signed by the parties below. This Agreement shall continue until April 1, 2020. Agreement may be terminated earlier or term may be extended, as provided in this Agreement.

#### 2 Agreement documents.

This Agreement consists of these Terms and Conditions and the documents (“Exhibits”) listed below in descending order of precedence. A conflict in these documents shall be resolved in the priority listed below with these Terms and Conditions taking precedence. The Exhibits to this contract are:

- Exhibit A: Grant Application
- Exhibit B: Matching Funds
- Exhibit C: Match Payment Schedule

### **3 Responsibilities of the Parties.**

#### **3.1 Grantee Responsibilities.**

- 3.1.1 Grantee shall coordinate with Subrecipients all specifications for Grantee's and Subrecipients' Equipment, including, but not limited to, price, quantity, manufacturer, and features. In coordinating with Subrecipients, Grantee shall apportion the Grant monies among Grantee and each Subrecipient proportionally based upon the specifications supplied to Grantee. Grantee shall negotiate in good faith the apportionment of the Grant monies among the Grantee and Subrecipients in relation to the specifications provided by each Subrecipient and the Grantee.
- 3.1.2 Upon receipt of the Grant monies, Grantee shall procure all specified Equipment for Grantee and Subrecipients, in accordance with Grant procurement requirements, as outlined above. Grantee agrees that it will provide all Matching Funds to procure the equipment required by the Grant, as outlined in Exhibit B.
- 3.1.3 Grantee shall distribute to each Subrecipient all Equipment upon receipt of the equipment from the manufacturer, as outlined in each Subrecipient's specification. In the event the delivered Equipment does not conform to the specifications submitted to Grantee by Subrecipients, Grantee shall negotiate in good faith with Subrecipient remedial actions to make such equipment conforming, or the replacement of the nonconforming equipment with conforming Equipment.
- 3.1.4 Grantee shall provide to each Subrecipient copies of each invoice and a report of each Subrecipient's apportion due on each invoice. Grantee will receive reimbursement for the Equipment from Subrecipients as outlined in Exhibit C.
- 3.1.5 Grantee shall comply with all conditions and certifications required by the Grant on behalf of Grantee and Subrecipients. Grantee shall prepare and file all reports, accounting, and any other documentation required by the Grant on behalf of Grantee and Subrecipients. In fulfilling the conditions, certifications, reporting, or any other documentation required by the Grant, Grantee shall coordinate with Subrecipients the submission to Grantee by the Subrecipients any and all requirements of the Subrecipients that the Grant requires.

#### **3.2 Subrecipients' Responsibilities.**

- 3.2.1 Subrecipients shall coordinate with and submit to Grantee specifications for all Equipment Subrecipient requests, including, but not limited to, price, quantity, manufacturer, and features. In coordinating Equipment requests with Grantee, Subrecipients shall negotiate in good faith the apportionment of the Grant monies among the Grantee and Subrecipients in relation to the specifications provided by each Subrecipient and the Grantee.
- 3.2.2 Subrecipients shall receive all Equipment procured by Grantee and delivered to Subrecipients. In the event the delivered Equipment does not conform to the specifications submitted to Grantee by Subrecipients, Subrecipients shall negotiate in good faith with Grantee remedial actions to make such equipment conforming, or the replacement of the nonconforming equipment with conforming Equipment.
- 3.2.3 Upon receipt of the invoice and report of apportionment, Subrecipient shall submit to Grantee their Matching Funds as outlined in the Match Payment Schedule in Exhibit C.

3.2.4 Subrecipients shall coordinate with Grantee any and all conditions, certifications, reporting, or any other documentation required by the Grant.

**4 Compliance with applicable laws.**

Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap. In addition, each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.

**5 Recitals.**

The recitals above are incorporated herein as if fully set forth.

**6 Independent Contractor.**

Each party is an independent contractor with regard to each other party and agrees that the performing party has no control over the work or the manner in which it is performed. No party is an agent or employee of any other. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.

**7 Disputes**

If any party believes that a specification, invoice, report, or any other documentations contains an error, then such party shall, within thirty (30) calendar days of receipt of such specification, invoice, report, or documentation, notify the issuing party of such specification, invoice, report, or documentation in writing that it disputes all or any contents of such specification, invoice, report, or documentation. Any contents as such not timely disputed in accordance with the preceding sentence shall be deemed to be undisputed and shall be considered accepted by all parties. With respect to any contents that are timely disputed, both parties will use reasonable efforts in good faith to resolve the dispute within thirty (30) calendar days of the issuing party's receipt of the notice. If any content remains disputed in good faith after such 30-day period, either party may escalate the disputed items to the parties' respective executive-level management to attempt to resolve the dispute. The parties agree that at least one of each of their respective executives-level representatives will meet (which may be by telephone or other similarly effective means of remote communication) within 10 calendar days of any such escalation to attempt to resolve the dispute. If the parties are unable to resolve the dispute in accordance herewith, either party thereafter may file an action, suit, or claim pursuant to this Agreement in order to seek resolution of the dispute.

## **8 Termination.**

### **8.1 Termination for convenience.**

Subject to any limitations in Exhibits B and C regarding repayment of funds, and subject to the resolution of disputes that this Agreement contemplates, this Agreement may be terminated, with or without cause and at any time, by a party by providing 30 days' written notice of intent to the other party.

### **8.2 Termination for cause.**

Either party may terminate this Agreement, in whole or in part, immediately upon notice, or at such later date as may be established in such a notice, to the other party upon the occurrence of the following events: One party commits any material breach or default of any covenant, warranty, obligation, certification or agreement under this Agreement, fails to perform the work or services under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the work or services as to endanger the performance under this Agreement in accordance with its terms.

## **9 Changes.**

Modifications to this Agreement are valid only if made in writing and signed by all parties.

## **10 Indemnification.**

Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including their officers, agents, and employees, against all claims, demands, penalties, actions and suits (including the cost of defense thereof and all attorney fees and costs, through all appeals) arising from the indemnitee's performance of this Agreement where the loss or claim is attributable to the acts or omissions of that party or its officers, employees or agents.

## **11 Action, suits or claims.**

Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in claims or litigation in any way related to this Agreement.

## **12 Insurance.**

Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 to 30.274.

## **13 No Third Party Beneficiaries.**

Except as set forth herein, this Agreement is between the parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third parties unless such third parties are expressly described as intended to be beneficiaries of its terms.

**14 Remedies, non-waiver.**

The remedies provided under this Agreement shall not be exclusive. The parties shall also be entitled to any other equitable and legal remedies that are available. No waiver, consent, modification or change of terms of this Agreement shall bind the parties unless in writing and signed by all parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

**15 Oregon law, Dispute Resolution and Forum.**

This Agreement shall be construed according to the laws of the State of Oregon. The parties shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the parties are unable to resolve any dispute within fourteen (14) calendar days, the parties are free to pursue any legal remedies that may be available. Any litigation between the parties arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Washington County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

**16 Assignment.**

No party shall assign its rights or obligations under this Agreement, in whole or in part, without the prior written approval of the other party or parties.

**17 Severability/Survival of terms.**

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken. All provisions concerning indemnity survive the termination of this Agreement for any cause.

**18 Force Majeure.**

In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the Party to be excused.

**19 Interpretation of Agreement.**

This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The Section headings contained in this Agreement are for ease of reference only and shall not be used in construing or interpreting this Agreement.

**20 Integration.**

This document constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject.

**21 Other Necessary Acts.**

The Parties shall execute and deliver to each other any and all further instruments and documents as may be reasonably necessary to carry out this Agreement.

**22 Notice.**

Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, electronic mail or mailing (postage prepaid), to City or the Agency at the address or number set forth below.

Grantee:	City of Forest Grove
Contact Name:	Michael Kinkade
Title:	Fire Chief
Department:	Fire
Contact Phone:	503-992-3275
Contact Address:	1919 Ash Street, Forest Grove Oregon 97116
Contact Email:	mkinkade@forestgrove-or.gov
Subrecipient 1:	City of Hillsboro
Contact Name:	
Title:	
Department	Fire
Contact Phone:	
Contact Address:	
Contact Email:	
Subrecipient 2:	City of Cornelius
Contact:	<i>Same as Grantee</i>
Subrecipient 3:	Tualatin Valley Fire and Rescue
Contact Name:	Deric Weiss
Title:	Fire Chief
Contact Phone:	503-649-8577
Contact Address:	11945 SW 70 <sup>th</sup> Ave, Tigard, OR 97223
Contact Email:	Deric.weiss@tvfr.com
Subrecipient 4:	Banks Fire District No. 13
Contact Name:	
Title:	
Contact Phone:	
Contact Address:	
Contact Email:	
Subrecipient 5:	Cornelius Rural Fire Protection District
Contact:	<i>Same as Grantee</i>
Subrecipient 6:	Forest Grove Rural Fire Protection District

Contact:	<i>Same as Grantee</i>
Subrecipient 7:	Gaston Rural Fire Protection District
Contact:	<i>Same as Grantee</i>

**23 Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

All of the aforementioned is hereby agreed upon by the parties and executed by the duly authorized representatives of the parties signing on the next page.

**SIGNATURE PAGES TO FOLLOW**

**SIGNATURE PAGE 1**

The Grantee and the Subrecipients hereby agree to all provisions of this Agreement:

FOR THE CITY OF FOREST GROVE:

FOR THE CITY OF HILLSBORO:

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

Jesse VanderZanden  
\_\_\_\_\_  
Name (Printed)

Bobby Hammond  
\_\_\_\_\_  
Name (Printed)

City Manager  
\_\_\_\_\_  
Title

City Manager  
\_\_\_\_\_  
Title

June 10, 2019  
\_\_\_\_\_  
Date

7/19/19  
\_\_\_\_\_  
Date

FOR THE CITY OF CORNELIUS:

FOR TUALATIN VALLEY FIRE AND  
RESCUE:

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

Rob Drake  
\_\_\_\_\_  
Name (Printed)

Deric Weiss  
\_\_\_\_\_  
Name (Printed)

City Manager  
\_\_\_\_\_  
Title

Fire Chief  
\_\_\_\_\_  
Title

6/17/19  
\_\_\_\_\_  
Date

7/9/19  
\_\_\_\_\_  
Date

**ADDITIONAL SIGNATURE PAGE TO FOLLOW**

SIGNATURE PAGE 2

FOR BANKS FIRE DISTRICT NO. 13:

Rodney Linnz  
Signature

Rodney Linnz  
Name (Printed)

Fire Chief  
Title

June 18, 2019  
Date

FOR CORNELIUS RURAL FIRE PROTECTION DISTRICT:

Michael W. Kinross  
Signature

Michael W Kinross  
Name (Printed)

Fire Chief  
Title

JUNE 12, 2019  
Date

FOR FOREST GROVE RURAL FIRE PROTECTION DISTRICT:

Clarence W. Howell  
Signature

Clarence (clay) W. Howell  
Name (Printed)

Board President  
Title

7/24/19  
Date

FOR GASTON RURAL FIRE PROTECTION DISTRICT:

Michael W. Kinross  
Signature

Michael W Kinross  
Name (Printed)

Fire Chief  
Title

JUNE 13, 2019  
Date

**Exhibit A – Grant Application**

### **Exhibit B – Matching Funds**

The Grant stipulates that the Grantee is responsible for 10% of the Award amount. Each Subrecipient shall pay to the Grantee 10% of the amount of the Equipment purchased by the Grantee on behalf of the Subrecipient. The exact amount will be determined based upon specifications submitted by each party, equipment bids, and final Grant amounts. The estimated costs per unit of the requested personal protective equipment is delineated in the Request Details of Exhibit A. E.

### Exhibit C – Match Payment Schedule

The Grantee shall be paid the required match portion from each Subrecipient upon the submission of proper instruments as outlined below, the prices stipulated in the Grant match requirement, less deductions, if any, as provided. (Exhibit B)

1. This contractual agreement concerning payments is conditional on the City of Forest Grove receiving the Grant Award.
2. No claims will be considered for payment until the Equipment is delivered with the exception of Solicitations or Purchase Orders that designate otherwise.
3. Upon the delivery of the Equipment specified, partial payment of **Ninety (90)** percent of the required match will be made within 45 days following receipt of any claims supported by an invoice and a duplicate. The remainder amount of **Ten (10)** percent shall be paid within 60 days of when all of the equipment is received, inspected, and found to comply with the procurement specifications – free from damage and properly invoiced and reported.
4. For a period of 12 months after payment of any claim, the Parties reserve the right, under this contract, to recover any damages due the Parties.