

**Intergovernmental Agreement  
Reimbursement of Costs**

This Intergovernmental Agreement (IGA) for the Reimbursement of Costs is made and entered into by and between the City of Salem, a local government entity located in the State of Oregon, acting by and through its Willamette Valley Communications Center (WVCC), and the State of Oregon, acting by and through its Oregon Military Department, Office of Emergency Management (OEM).

**Whereas**, WVCC has acquired or has independently developed and maintains certain datasets, some necessary for and related to Geographic Information Systems and some necessary for and related to the Master Street Addressing Guide; and

**Whereas**, WVCC has incurred certain costs, as defined herein, related to the acquisition, development and maintenance of the datasets; and

**Whereas**, pursuant to its authority under ORS 403.235 to 403.240 and OAR 104-080-0060(2)(c), OEM may reimburse WVCC for costs related to GIS and MSAG.

**Now, therefore**, in consideration of the mutual terms, covenants and conditions set forth herein, the parties hereto agree as follows:

**1. Definitions.**

“Costs” includes the hourly wage of WVCC employees providing the Work, including benefits; and other costs for the services, goods, or products related to the development and maintenance of the datasets, as detailed in each invoice.

“GIS” means Geographic Information System.

“MSAG” means the Master Street Addressing Guide.

“Work” means any and all tasks and deliverables related to WVCC’s development, maintenance, and distribution of GIS, and MSAG data as defined in OEM’s GIS/MSAG Funding Policy, including coordinating, meeting, and sharing the datasets with OEM and other public safety entities in the State of Oregon.

**2. Services.** WVCC shall perform all Work and, pursuant to other agreements, shall share the datasets with OEM and other public safety entities in the State of Oregon.

**3. Compensation; Funds Available and Authorized.** Pursuant to its authority under ORS 403.235 to 403.240 and OAR 104-080-0060(2)(c), OEM shall reimburse WVCC for its reasonable Costs related to the Work. OEM’s payment or reimbursement obligations under this IGA are subject to the provisions of ORS 403.235 to 403.240 and OAR 104-080-0060(2)(c) and conditioned upon OEM receiving funding, appropriations, limitations, allotments, or other

expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to meet its payment or reimbursement obligations under this IGA. WVCC is not entitled to receive payment under this IGA from any part of Oregon state government other than OEM. Nothing in this IGA is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

**4. Reimbursement Process.** WVCC shall submit an invoice and supporting documentation to OEM on (at least) a quarterly basis for the Work performed in the previous quarter, as follows:

<u>Work Performed</u>	<u>Invoice Due</u>
January, February, March	April 15
April, May, June	July 15
July, August, September	October 15
October, November, December	January 15

The reimbursement request shall comply with the reimbursement process as defined in OEM's GIS/MSAG Funding Policy and shall meet the requirements specified within; including submission components, valid Work categories, deliverables complying with data standards and minimum quality of work levels. The Work shall be itemized according to the hourly worksheets specified within the Policy; describing all Work performed and explaining all expenses that WVCC has paid and for which WVCC claims reimbursement. All expenses are subject to the Oregon Travel Policy. All payments are subject to ORS 293.462.

**5. Term.** This IGA is effective as of the date of signing by both parties and will continue until December 31, 2016 or until terminated by either party upon thirty (30) days prior written notice to the other.

**6. Termination.** OEM may terminate this IGA immediately, in the event: (i) OEM fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this IGA; or (ii) Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the payment or reimbursement for the Work by OEM under this IGA is prohibited, or OEM is prohibited from paying or reimbursing WVCC for the Work from the planned funding source; or (iii) WVCC is in breach of any provision of this IGA and fails to cure such breach within ten (10) days written notice from OEM.

**7. Representations and Warranties.** WVCC represents and warrants that:

- a. WVCC has the authority to enter into this IGA and has or has obtained all necessary rights in and to the datasets, the GIS, MSAG, and other information; and
- b. each of the invoices submitted by WVCC is true and accurate; and
- c. the need for and amount of each of the Costs was identified in the original or amended E9-1-1 Service Plan; and
- d. WVCC has delivered a copy of any third party contracts to OEM; and

- e. WVCC has not been paid or reimbursed for the Costs from any other source; and
- f. WVCC is not in violation of, charged with nor, to the best of WVCC's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Work, and WVCC's provision of the Work shall not violate any such law, ordinance, regulation or order; and
- g. to the best of WVCC's knowledge, WVCC's Work and performance under this IGA creates no potential or actual conflict of interest, as defined by ORS 244, for either WVCC or any WVCC personnel that will perform the Work or any services under this IGA.

**8. Independent Contractor.** For the purposes of this IGA for Payment or Reimbursement of Costs, WVCC is an independent contractor. Even though OEM may be reimbursing WVCC for services performed by WVCC employees pursuant to OEM's authority under ORS 403.235 to 403.240 and OAR 104-080-0060(2)(c), such persons are employees of WVCC and are not employees of the State of Oregon and are not entitled to any employment benefits from the State of Oregon. WVCC represents and warrants that the personnel providing services comprising the Work are WVCC employees; that WVCC withholds applicable income taxes from the pay of its employees; that WVCC pays workers' compensation insurance premiums arising from the employment of its employees for all Work claimed for reimbursement under this IGA; that WVCC makes all other applicable tax and related payments arising from that employment (including without limitation social security tax payments); and that WVCC provides employee benefits to its employees, including without limitation health insurance benefits, vacation benefits, and retirement benefits. WVCC WILL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY THE STATE OF OREGON AND ITS AGENCIES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM ANY CLAIMS MADE BY WVCC'S EMPLOYEES OR ANY THIRD PARTY THAT THE EMPLOYEES ARE ENTITLED TO BENEFITS AS EMPLOYEES OF THE STATE OF OREGON, OR THE THIRD PARTY IS ENTITLED TO PAYMENTS FROM THE STATE OF OREGON ARISING FROM AN EMPLOYMENT RELATIONSHIP.

**9. Assignment and Transfer.** WVCC shall not assign, delegate or transfer any of its rights or obligations under this IGA without OEM's prior written consent.

**9. 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 a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the WVCC (or would be if joined in the Third Party Claim ), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the WVCC in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the WVCC on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the WVCC on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the WVCC is jointly liable with the State (or would be if joined in the Third Party Claim), the WVCC shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the WVCC on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the WVCC on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The WVCC's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

**10. Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this IGA. This may be done at any management level, including at a level higher than persons directly responsible for administration of the IGA. 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.

**11. Miscellaneous.**

- a. **Applicable Law; Venue.** This IGA will be construed and interpreted under and pursuant to the laws of the State of Oregon. The parties agree that venue for any action or claim arising out of or in connection with this IGA will be in the Circuit Court for the State of Oregon for Marion County.
- b. **Compliance with Law.** The parties shall comply with all federal, state and local laws, regulations, and ordinances applicable to this IGA, as those laws, regulations and ordinances may be adopted or amended from time to time.

c. Attorney's Fees. Except for defense costs and expenses pursuant to sections 9 or 10, neither party is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this IGA.

d. Notices. All notices required under this IGA will be in writing and addressed to the party, as identified below. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. E-mail notices are deemed received upon electronic confirmation of receipt. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

**City of Salem - WVCC**

Name: Mark W. Buchholz  
Title: Director  
Address: 555 Liberty Street SE, Room P107  
Salem, Oregon 97301  
Phone: (503) 763-3333  
Fax: (503) 585-8914  
E-Mail: [mbuchholz@cityofsalem.net](mailto:mbuchholz@cityofsalem.net)

**OEM:**

Office of Emergency Management  
Mark Tennyson  
PO Box 14370  
Salem, Oregon 97309  
FAX No: 503-373-7833  
E-Mail Address: [mark.tennyson@state.or.us](mailto:mark.tennyson@state.or.us)

e. Access to Records. WVCC shall retain, maintain, and keep accessible all records relevant to this IGA ("Records") for minimum of six (6) years from termination, or a longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this IGA, whichever ending is later. WVCC shall maintain all financial Records in accordance with Generally Accepted Accounting Principles. During this Record-retention period, WVCC shall permit the State, or its duly authorized representative, access to the Records at reasonable times and places for purposes of examination and copying.

f. Intended Beneficiaries. WVCC and OEM are the only parties to this IGA and are the only parties entitled to enforce the terms of this IGA. Nothing in this IGA gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this IGA.

g. Invalidity. If any term or provision of this IGA or the application thereof to any person or circumstance is to any extent invalid or unenforceable, the remainder of this IGA will be valid and enforced as written to the fullest extent permitted by law.

h. Amendment. No waiver, consent, modification or change in the terms of this IGA will bind either party unless in writing signed by both parties.

i. Counterparts. This IGA may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this IGA so executed constitutes an original.

j. Entire Agreement. This IGA contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement or promise made by any party hereto, which is not contained herein, will be binding or valid.

City of Salem

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

the State of Oregon, Oregon Military  
Department, Office of Emergency  
Management

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved pursuant to ORS 291.047  
Oregon Department of Justice

By: \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_