

**RESOLUTION No. 19/20-08
CITY OF DAYTON, OREGON**

A Resolution of the Dayton City Council authorizing the City Manager to Enter into a Grant Agreement with the State Oregon Military Department- Office of Emergency Management for a Portable Power Generator

WHEREAS, The City, in coordination with Dayton School District #8, applied for a State Preparedness and Incident Response Equipment (SPIRE) Grant through the Oregon Office of Emergency Management (OEM) in early 2019; and

WHEREAS, the City of Dayton was awarded a SPIRE grant by OEM on October 9, 2019 whereby it will receive an Option C Portable Power Generation 108kW; and

WHEREAS, the City desires to enter into a Grant Agreement with OEM to obtain the desired equipment which the City plans to use in the event of natural disaster to power an emergency shelter in the City.

The City of Dayton resolves as follows:

Section 1. The City Council authorizes the City Manager to enter into the Grant Agreement with OEM in substantially the same form as the attached Exhibit A.

Section 2. This resolution is effective upon approval by the City Council.

ADOPTED this 21st day of October 2019.

In Favor: Collins, Holbrook, Mackin, Marquez, Price, Sandoval-Perez, Wytoski

Opposed: None

Absent: None

Abstained: None


Elizabeth Wytoski, Mayor

10/24/19
Date of Signing

ATTESTED BY:


Patty Ringnald, City Recorder

10/21/19
Date of Enactment

Attachment: Exhibit A

EXHIBIT A

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
STATE PREPAREDNESS AND INCIDENT RESPONSE GRANT
City of Dayton
Portable Power Generation 108kW
Grant No: 18-119**

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 **City of Dayton**, hereinafter referred to as "Recipient," 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. This Agreement, and OEM's obligation to provide the Equipment (as that term is defined in Section 3) under this Agreement, shall terminate as provided in Section 8.
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: **Equipment Schedule**

3. **EQUIPMENT.** In accordance with the terms and conditions of this Agreement, OEM shall provide Recipient the item(s) of emergency response vehicles, equipment, and other personal property identified in Exhibit A (collectively, the "Equipment"). Recipient shall use the Equipment solely to decrease risks to life and property resulting from an emergency, as defined in ORS 401.025.
4. **MAINTENANCE; ANNUAL SUSTAINMENT REPORTS.**
 - a. Recipient must maintain, repair, perform upkeep on, and otherwise keep the Equipment in good working condition.
 - b. Recipient shall submit annual sustainment reports using a form provided by OEM. The sustainment reports will summarize Recipient's maintenance and use of the Equipment during the preceding calendar year.
 - c. Recipient must submit sustainment reports to OEM annually on or before January 31st.
 - d. Recipient may request from OEM prior written approval to submit a sustainment report after its due date. OEM may approve or deny the request in its sole discretion.
 - e. Failure of Recipient to timely submit an annual program sustainment report may result in termination of this Agreement.
5. **RECORDS MAINTENANCE AND ACCESS; EQUIPMENT INSPECTIONS.**
 - a. **Records, Access to Records.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Equipment in

accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards, and state minimum standards for audits of municipal corporations. OEM, the Secretary of State of the State of Oregon (the "Secretary"), and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement or the Equipment provided for the purpose of making audits and examinations. In addition, OEM, the Secretary, and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records.

- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement or the Equipment for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following termination of this Agreement. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Equipment Inspections.** Recipient shall permit authorized representatives of OEM to periodically inspect the Equipment, with or without notice.

6. OPERATION AND MAINTENANCE EXPENSES. Recipient shall be solely responsible for the costs of operating, maintaining, licensing, and insuring the Equipment and the costs, if any, to acquire and install any parts, accessories, or attachments for the Equipment (collectively, the "Operating Expenses"). OEM shall not be responsible for any Operating Expenses while the Equipment remains in Recipient's possession, custody, or control.

7. OWNERSHIP. The OEM will retain ownership of the Equipment and can reclaim any or all of the item(s) of Equipment at any time and for any duration based on Recipient's failure to meet requirements of this Agreement, community needs, or any other purpose, as determined by OEM in its sole discretion. Upon the Equipment being fully depreciated under governmental accounting principles, OEM may elect to sell the Equipment to Recipient at its fair market value.

8. TERMINATION.

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by OEM in such written notice, if:
 - i. Recipient fails to follow grant agreement requirements or standard or special conditions; or
 - ii. Recipient fails to adequately maintain the Equipment; or
 - iii. Recipient fails to submit required reports; or
 - iv. Recipient fails to comply with inspections for any reason; or
 - v. Recipient files a false certification in this application or other report or document, including correspondence with OEM by any medium; or
 - vi. OEM determines that the Equipment could be of greater use to the community elsewhere.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Recipient in such written notice, if:
 - i. Recipient no longer needs the Equipment; or

- ii. The Equipment is beyond its useful life.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten business days' notice to the other Party.
- d. **OEM's Rights Upon Termination.** Upon termination under this Section 8:
 - i. OEM may repossess the Equipment from Recipient and, if Recipient has failed to adequately maintain the Equipment as required by Section 4(a), require Recipient to reimburse OEM the cost of repairing the Equipment; or
 - ii. Where Recipient has failed to adequately maintain the Equipment as required by Section 4(a), OEM may require Recipient to pay OEM an amount equal to the Equipment's fair market value assuming proper maintenance and repair.

9. REPRESENTATIONS AND COVENANTS REGARDING THE TAX-EXEMPT STATUS OF BONDS.

- a. Recipient acknowledges that the State of Oregon may issue certain bonds (the "Bonds") in part to fund this grant and that the interest paid on the Bonds is excludable from gross income for federal income tax purposes. Recipient further acknowledges that the uses of the Equipment by Recipient during the term of the Bonds may impact the tax-exempt status of the Bonds. Accordingly, Recipient agrees to comply with all applicable provisions of the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations, (the "Code") necessary to protect the exclusion of interest on the Bonds from federal income taxation.
- b. Recipient shall not, without prior written consent of OEM, permit more than five percent (5%) of the Equipment to be used in a "private use" by a "private person" (as defined in the Code) if such private use could result in the State of Oregon, receiving direct or indirect payments or revenues from the portion of the Equipment to be privately used.
- c. This subsection 9 shall survive any expiration or termination of this Agreement.

10. GENERAL PROVISIONS.

- a. **Indemnity.** To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless the State of Oregon, OEM and each of their officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors arising from this agreement. This Section shall survive expiration or termination of this Agreement.
- 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 10.b.

- c. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. **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 Recipient 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.
- e. **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 Recipient 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.
- f. **Compliance with Law.** Recipient 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.
- g. **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.
- h. **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.

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.

City of Dayton

By Rochelle F. Roaden

Name Rochelle F. Roaden
(printed)

Date 10/24/2019

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Recipient)

By _____
Recipient's Legal Counsel

Date _____

Recipient Program Contact:

Rochelle Roaden
City Manager
City of Dayton
416 Ferry Street
PO Box 339
503-864-2221
rroaden@ci.dayton.or.us

Recipient Fiscal Contact:

Dawn Beveridge
Accountant
City of Dayton
416 Ferry Street
PO Box 339
503-864-2221
dbeveridge@ci.dayton.or.us

State of Oregon, acting by through its Oregon Military
Department/Office of Emergency Management

By Clint J Fella

Clint Fella
Mitigation and Services Section Manager, OEM

Date 10/28/19

APPROVED AS TO FORM

By Sam Zeigler via email
Senior Assistant Attorney General

Date: August 8, 2019

OEM Program Contact:

Jim Jungling
Program Coordinator, OEM
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3552
jim.jungling@state.or.us

OEM Fiscal Contact:

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EXHIBIT A

Equipment Schedule

Description	Make	Model	Serial No.
Portable power generation	108 kW		