



Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

December 5, 2019

Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Sub-Recipient Grant Agreement for
Local Emergency Planning Committee (LEPC) Planning and Exercise

Purpose/ Outcomes	The purpose of the grant is to plan with facilities that have the hazardous materials that fall under the "Right to Know Act" and to provide an exercise for the general County planning document. This grant agreement is between Clackamas County Disaster Management (CCDM) and the Office of State Fire Marshal (OSFM).
Dollar Amount and Fiscal Impact	The grant agreement is for \$16,710 with a \$4,177.50 match bring the grant total to \$20,887.50.
Funding Source	Clackamas County Disaster Management – The \$4,177.50 match is a soft match, therefore, staff time will be used for the match.
Duration	Effective through September 25, 2020.
Previous Board Action	This is an on going series of awards to provide assistance to Clackamas County for LEPC planning and exercises. The last grant award was approved in May 2019 by the BCC.
Strategic Plan Alignment	1. Ensure safe, healthy and secure communities.
Counsel Review	November 25, 2019
Contact Person	Nancy Bush, Director, CCDM – 503-655-8665
Contract No.	N/A

BACKGROUND:

Clackamas County Disaster Management is key is a functional Clackamas LEPC and the grants available are critical to planning, exercises, and response to hazardous materials spills. The grant agreement is federal dollars passed through the OSFM to assist with local emergency response planning through the training and support of an appropriate local hazardous materials emergency response capability at the local level.

RECOMMENDATION:

Staff recommends the Board approval of this grant.

Respectfully submitted,

Nancy Bush, Director
Disaster Management

SUB-RECIPIENT GRANT AGREEMENT

This Sub-recipient Grant Agreement (this “Agreement”) is entered into by and between the State of Oregon acting by and through its Department of State Police, for the benefit of its Office of State Fire Marshal (“OSFM”) and Clackamas County Disaster Management, (“Sub-recipient”).

RECITALS

- A. By authority granted under ORS 190.110, a state agency or unit of local government of this state may cooperate by agreement or otherwise, with a state agency or unit of local government of this or another state in performing a duty imposed upon it or in exercising a power conferred upon it.
- B. In order to ensure a swift response to a hazardous substance accident and to minimize damage to people, property, and wildlife, OSFM is authorized under ORS 453.347 to assist with emergency response planning by appropriate agencies of local and state government, and may apply for funds to train, equip, and maintain an appropriate response capability at the state and local level.
- C. The parties desire to engage in this Agreement for the mutual benefit of the parties. OSFM desires to enter into this Agreement to assist with local emergency response planning through the training and support of an appropriate local hazardous materials emergency response capability. Sub-recipient desires to receive financial assistance from OSFM to carry out the local hazardous materials emergency preparedness training(s) or project(s) as further described in Exhibit A attached hereto (the “Project”).
- D. The parties acknowledge and agree that this Agreement is a sub-award of certain grant funds from OSFM to Sub-recipient (the “Grant Funds”). The Grant Funds are from the United States Department of Transportation. The Catalog of Federal Domestic Assistance (CFDA) number for the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety, Hazardous Materials Emergency Preparedness program is 20.703.

TERMS OF SUB-RECIPIENT GRANT AGREEMENT

1. PURPOSE.
 - 1.1 Purpose. The purpose of this Agreement is to establish the terms and conditions of the distribution of the Grant Funds and implementation of the Project, as a part of state and local hazardous materials emergency planning and preparedness measures.
2. TERM / EFFECTIVE DATE.
 - 2.1 This Agreement terminates on September 25, 2020, unless sooner terminated or extended pursuant to other provisions of this Agreement.
3. SUB-RECIPIENT OBLIGATIONS.
 - 3.1 Sub-recipient agrees to comply with all Project details as set forth in Exhibit A, the Application for Funds, and with the requirements of the Pipeline and Hazardous Materials Safety Administration, Hazardous Materials Emergency Preparedness Grant Program, Terms and Conditions attached hereto as Exhibit B (“HMEP Terms and Conditions”). For the purposes of this Agreement, Sub-recipient will comply with only those sections applicable to its role as a sub-recipient with an exception, as provided in Section 16 of the HMEP Terms and Conditions for “Flow-down of Requirements under Sub-awards”.
 - 3.2 Sub-recipient agrees to provide 25% of the total project cost in cash (hard match) or as an in-kind (soft match) contribution, or a combination of both (“Sub-recipient Match”). Sub-recipient agrees to provide documentation showing how it satisfied the Sub-recipient Match requirement. Match validation

documentation shall be provided with the Request for Reimbursement. OSFM reserves the right to determine if the Sub-recipient Match requirement is satisfied. The minimum amount of match required for the Grant Funds under this Agreement is **\$4,177.50** (“Sub-recipient Match Amount”).

- 3.3 Sub-recipient agrees to use Oregon Department of Public Safety Standards and Training (DPSST) approved instructors, when applicable for the Project. Sub-recipient shall submit:
- 3.3.1 The application required for DPSST to certify the course and the instructor(s) before the classes are held.
- 3.3.2 A student roster and course evaluations to DPSST’s Fire Training Section with copies to the OSFM at the completion of the class.
- 3.4 Sub-recipient agrees to provide OSFM with copies of all sub-awards and invoices.
- 3.5 Sub-recipient agrees to submit to OSFM a Request for Reimbursement in the form attached hereto as Exhibit C (“Request for Reimbursement”) of applicable charges for verification and approval of expenditures before payment is made by OSFM. All Requests for Reimbursements must be submitted to OSFM no later than thirty (30) days following the termination of this Agreement and must include the following information:
- 3.5.1 For projects:
- a. the project title,
 - b. training or exercise scenario agenda,
 - c. rosters, and
 - d. evaluation forms.
- 3.5.2 For exercises:
- a. an exercise timeline,
 - b. pre-exercise packages, and
 - c. the after action report.
- 3.6 Sub-recipient agrees to submit performance and financial reports as required in Section 13 of the HMEP Terms and Conditions to the OSFM Grant Project Manager identified in Section 5.

4. OSFM’s OBLIGATIONS.

- 4.1 OSFM agrees to provide direction and support, on an “as needed” basis when reasonable, to Sub-recipient.
- 4.2 OSFM agrees to work with Sub-recipient to distribute announcements to public safety agencies across Oregon that may be interested in participating in the training or exercise.
- 4.3 OSFM agrees to reimburse Sub-recipient for actual incurred expenditures related to the completion of the Project, excluding the Sub-recipient Match Amount, with the Grant Funds up to an amount not to exceed **\$16,710.00**, (“Grant Amount”) for performance of the obligations set forth in Section 3. Any and all expenses not covered by the Grant Amount and Match Amount are the sole responsibility of Sub-recipient. Questions regarding eligible costs should be addressed to the OSFM Grant Project Manager identified in Section 5 of this Agreement, who will have final decision-making authority. Any Grant Funds disbursed to Sub-recipient under this Agreement that are used in violation or contravention of one or more of the provisions of this Agreement or the laws pertaining to public funds (“Misexpended

Funds”) must be returned to OSFM by Sub-recipient, no later than ten (10) days after OSFM’s written demand therefor.

5. NOTIFICATIONS.

5.1 OSFM CONTACT.

Notifications required for the administration of this Agreement shall be sent to:

Terry Wolfe, Grant Project Manager
Office of State Fire Marshal
3565 Trelstad Ave. SE
Salem, OR 97317
Ph: 503-934-8245
Email: terry.wolfe@osp.oregon.gov

5.2 NAME OF OTHER PARTY CONTACT.

Notifications required for the administration of this Agreement shall be sent to:

Nancy Bush, Director
Clackamas County Disaster Management
2200 Kaen Rd.
Oregon City, OR. 97045
Ph: 503-655-8665
Email: nbush@clackamas.us

5.3 ANNOUNCEMENTS; PUBLICATIONS.

5.3.1 Sub-recipient agrees that all training, planning, and exercise announcements or publications created with any Grant Funds shall contain the following announcements: *“This (choose one of the following) (training, exercise, or publication) was funded by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Hazardous Materials Emergency Preparedness grant program through the Oregon State Police, Office of State Fire Marshal and (insert name) Local Emergency Planning Committee (or if not an LEPC then insert the Name of Other Party).”*

5.3.2 Sub-recipient agrees to include the following language in all publications related to the Project: *“The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author and do not necessarily reflect views of the U.S. Department of Transportation or Oregon State Police, Office of State Fire Marshal.”*

6. TERMINATION.

6.1 This Agreement may be terminated prior to the Termination Date at any time by mutual written consent of the parties.

6.2 OSFM may unilaterally terminate this Agreement effective ten (10) days after delivery of written notice to Sub-recipient, or at such later date as may be established by OSFM, under any condition including, but not limited to, the following:

6.2.1 If Sub-recipient fails to perform any of the provisions of this Agreement, or so fails to pursue the Project as to endanger performance of obligations as required under this Agreement, and after receipt of written notice from OSFM, fails to correct such failures within ten (10) days, or such longer period as OSFM may authorize.

- 6.2.3 If OSFM fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow OSFM, in the exercise of its reasonable administrative discretion, to continue to make the payments provided for in this Agreement.
 - 6.2.4 If federal or state laws, regulations, or guidelines are modified, or interpreted in such a way that the Project under this Agreement is prohibited, or if OSFM is prohibited from paying for such Project from the planned funding source.
 - 6.2.5 If Sub-recipient fails to provide the Sub-recipient Match for the Project.
- 6.3 Termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

7. NON-APPROPRIATION

The State of Oregon's payment obligations under this Agreement are conditioned upon OSFM receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OSFM, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Sub-recipient is not entitled to receive payment under this Agreement from any part of Oregon state government other than OSFM. Nothing in this Agreement 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. OSFM certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within OSFM's current appropriation or limitation of the current biennial budget.

8. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively, "Claim") between OSFM (and any other agency or department of the State of Oregon) and Sub-recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity or 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. SUB-RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

9. COMPLIANCE WITH GOVERNMENT REGULATIONS.

- 9.1 Sub-recipient agrees to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230, and 279B.270, which are hereby incorporated by reference. Without limiting the generality of the foregoing, Sub-recipient expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (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.
- 9.2 Sub-recipient shall comply with the Assurance of Compliance with Title VI of the Civil Rights Act of 1964, Department of Transportation, attached hereto as Exhibit D.

- 9.3 Sub-recipient shall insert the following notification in all solicitations for bids for work or material subject to the Title 49, Code of Federal Regulations and, in adapted form, in all proposals for negotiated agreements related to this Agreement.

“The Sub-recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-4 and Title 49 Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.”

10. CONTRIBUTION.

- 10.1 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.
- 10.2 With respect to a Third Party Claim for which the State is jointly liable with Sub-recipient (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 Sub-recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of Sub-recipient 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 Sub-recipient 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.
- 10.3 With respect to a Third Party Claim for which Sub-recipient is jointly liable with the State (or would be if joined in the Third Party Claim), Sub-recipient 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 Sub-recipient 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 Sub-recipient 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. Sub-recipient'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.

10.4 Notwithstanding any other provision of this section 10, Sub-recipient, as the recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for Sub-recipient's breach of the conditions of the grant, and shall, upon Sub-recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay grantor.

11. REMEDIES.

In the event that Sub-recipient violates any term or condition under this Agreement, OSFM shall have all remedies available to it under law, in equity, and under this Agreement.

12. INSURANCE REQUIREMENTS.

12.1 The parties acknowledge and agree Sub-recipient is a unit of local government as defined in ORS 190.003, and in order to meet the requirements of ORS 30.272 and ORS 30.273 may be commercially insured or self-insured.

12.2 Sub-recipient shall obtain, and at all times keep in effect, comprehensive liability insurance and property damage insurance covering its own acts and omissions under this Agreement. With the exception of obligation set forth in section 10.4, Sub-recipient may satisfy these requirements in any manner allowed by ORS 30.282. Such liability insurance, whatever the form, shall be in an amount not less than the limits of public body tort liability specified in ORS 30.271. In the event of unilateral cancellation or restriction by the insurance company of Sub-recipient's insurance policy referred to in this paragraph, Sub-recipient, as applicable, shall immediately notify OSFM verbally and in writing. Sub-recipient's coverage limits shall not be less than \$2,000,000 for any single claimant and \$4,000,000 for multiple claimants.

12.3 All employers, including Sub-recipient, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126.

12.4 If Sub-recipient uses a subcontractor to perform the Project, or portions thereof, the subcontractor shall meet the Subcontractor Insurance Requirements set forth on Exhibit E attached hereto.

13. THIRD PARTY BENEFICIARY.

OSFM and Sub-recipient are the only parties to this Agreement and are the only parties entitled to enforce the 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 or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

14. FORCE MAJEURE.

The parties shall not be held responsible for delay or default caused by fire, riot, acts of God and war, which are beyond the parties' reasonable control. The parties shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of the obligations under this Agreement.

15. ENTIRE AGREEMENT/WAIVER/MERGER.

This Agreement and attached exhibits constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. 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 OSFM to enforce any provision of this Agreement shall not constitute a waiver by OSFM of that or any other provision.

16. AMENDMENTS.

This Agreement may be amended by mutual agreement of the parties, but only to the extent permitted by applicable statutes and administrative rules. No amendment to this Agreement shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained.

17. RECORDS MAINTENANCE; ACCESS.

Sub-recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. If Sub-recipient expends \$500,000 or more of federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Sub-recipient shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Sub-recipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. Copies of all audits must be submitted to OSFM within 30 days of completion. If Sub-recipient expends less than \$500,000 in federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, Sub-recipient is exempt from federal audit requirements for that year. In addition, Sub-recipient shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Sub-recipient's performance. Sub-recipient acknowledges and agrees that OSFM and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Name of Other Party that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Sub-recipient shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

18. SEVERABILITY.

The parties agree that 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 the Agreement did not contain the particular term or provision held to be invalid.

19. COUNTERPARTS.

This Agreement 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 the Agreement so executed shall constitute an original.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE AUTHORITY TO SIGN AND BIND THEIR RESPECTIVE AGENCIES, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CLACKAMAS COUNTY DISASTER MANAGEMENT _____ Nancy Bush Director	DATE: _____
OREGON OFFICE OF STATE FIRE MARSHAL: _____ James L. Walker State Fire Marshal	DATE: _____

EXHIBIT A

STATEMENT OF WORK

The purpose of the Project is *to hire a contractor to continue development of an EPCRA, LEPC compliant Emergency Response Plan to include additional facilities in to the existing plan, in the existing plan format.*

THE PROJECT

APPLICATION FOR FUNDS

NOTE: The Grant Application is paginated with an “A” preceding the page number. The following page numbers constitute Exhibit A, Application for Funds: A-1 – A-6.

FY 2019 – 2020 Hazardous Materials Emergency Preparedness Grant Program COVERSHEET

Project title: Clackamas LEPC Planning

Project period: October 1, 2019 – September 30, 2020

Applicant agency: Clackamas County Disaster Management

Mailing address: 2200 Kaen Road

Oregon City, OR 97045

Federal Tax Identification Number: 93-6002286

Data Universal Numbering System (DUNS) Number: 96992656

Project contact: Nancy Bush **Title:** Director

Phone: 503-655-8665 **Email:** nbush@clackamas.us

Local Emergency Planning Committee

Are you applying on behalf of a Local Emergency Planning Committee (LEPC)? Yes

If yes, what LEPC: Clackamas County

Total project funding

Refer to Calculating the Match on page 6 of the Budget Summary worksheet.

The Match is **25%** of the **Requested** Amount. The Match is also equal to **20%** of the **Total Project**

Total Federal HMEP Grant Funds Requested	\$16,710.45
Total Matching Funds Required	\$4,177.61
Total Project:	\$20,888.06

Agency Authorized Official: Nancy Bush **Title:** Director

Signature: _____ **Date:** _____

Application Due Date: 5:00 p.m., Friday, March 29, 2019

FY 2019-20 Hazardous Materials Emergency Preparedness Grant Program BUDGET SUMMARY: Project 1

A		B			C
Budget Category		Planning/Description of Activities - Expense			Grant Request
1	Travel	Contractual Travel: \$155 lodging (Includes tax) x 2 days x 1 person = \$310 \$66 per diem (full days) x 2 days x 1 person = \$132 \$49.50 per diem (2 travel days) x 1 person = 99.00 Airline Ticket for 1 = \$406			\$947.00
2	Equipment				\$
3	Supplies				\$
4	Contractual	Planning Hours contract for continued planning for facilities. Budget is below: Principal: 15.5 hrs x \$204.76/hr = \$3,173.78 Analyst III: 10 hrs x \$111.02/hr = \$1,110.20 Analyst I: 145 hrs x \$79.17/hr = \$11,479.65			\$ 15,763.45
5	Other				\$
6	Other				\$
7		Planning Subtotal			\$ 16,710.45
Budget Category		Training Course Activities	Item/Expense	Estimated # Training	Grant Request
8	Travel				\$
9	Equipment				\$
10	Supplies				\$
11	Contractual/Trainer				\$
12	Other				\$
13	Other				\$
14		Training Subtotal			\$
Budget Category		Exercise/Description of Activities - Expense			Grant Request
15	Travel				\$
16	Equipment				\$
17	Supplies				\$
18	Contractual				\$
19	Other				\$
20	Other				\$

A-2

FY 2019-2020 Hazardous Materials Emergency Preparedness Grant Program

PROJECT NARRATIVE

Project type (select one or more)

Planning Training Exercise Commodity Flow Study Other

Project Description

Who –Who will be performing the task or activity?

What –What task or activity is being performed?

Why –Why is the task or activity being performed?

Where –Where will the task or activity take place?

When –When is the task or activity projected to be performed?

How Many – What is the projected number of participants involved in the task or activity?

This project is the continuation of the general Clackamas LEPC Plan. It is expected the contractor will continue to provide planning for the 90 plus facilities in Clackamas County. Currently the top 20 have been contacted and 5 of those facilities did not respond, which is noted in the LEPC Emergency Plan. The contractor may also be asked to continue to contact those five facilities and other facilities that are currently being contacted and do not respond. It is critical to the Clackamas County LEPC to continue to get the grant funding so that eventually all facilities will be included in the general plan.

Collaboration - Area of benefit and partners

List the cities, counties, response disciplines, public and private entities, etc. that will benefit by the proposed project.

Indicate who you will partner with to conduct this project.

Participants will include the right-to-know facilities, appropriate law enforcement and fire districts, public health, disaster management, water providers, public works (city and county), and other disciplines related to the facilities and the hazardous materials they may store.

The project will benefit all incorporated cities (see below) and unincorporated Clackamas County. Utility providers, private industry and businesses, Union Pacific and retail stores will also benefit. Most, if not all, of the mentioned above have been involved in the Clackamas County LEPC meetings, which are every two months.

Cities: Barlow, Canby, Estacada, Gladstone, Happy Valley, Johnson City, Lake Oswego, Milwaukie, Molalla, Oregon City, Rivergrove, Sandy, Tualatin (section in Clackamas), West Linn, Wilsonville (section in Clackamas).

Overall contribution

How does the project contribute to the overall effort of addressing and/or enhancement of local hazardous materials planning and training?

How does the activity address a need or provide a solution to the problem (e.g. long-range plans, etc.)?

The Clackamas LEPC has now been in existence for almost two years. Over that time the LEPC members have worked with grants to develop a general LEPC plan, a Rail Plan, and currently using grant dollars to add more facilities and developing an exercise. The Clackamas LEPC has also adopted by-laws and meets on a regular basis. This grant will continue those efforts by adding to the general planning document and giving all right-to-know facilities a chance to be a part of the LEPC as required by law.

The grant fits into the long range plans by bringing more partners to the table and by encouraging facilities to be active members and to be a part of the solution. Also, by having more facilities as active members of the LEPC there are greater training and educational opportunities so that all are hearing the same message and playing in the same exercises as the group moves forward.

Project management - Itemize the tasks and include a timetable

Who is supervising the project?

Who is responsible for managing the grant?

Who will do the work?

What is the proposed timeline for completion of the project?

How will you make sure timelines and tasks are being met?

What plans, strategies, or practices are you using to reach the project objectives?

Have all pertinent parties agreed to these plans, strategies, and practices?

Nancy Bush, Director of Clackamas County Disaster Management Department (CCDM) is providing grant management. The work will be completed by a qualified contractor and the members of the LEPC. As a check on the planning effort in order to keep it on target, the contractor will be required to submit monthly reports. The invoices may be submitted monthly or quarterly, which will be negotiated at time of the contract award.

The proposed timeline completion is expected to be no later than September 30, 2020.

Objectives, project outcomes, results, and evaluation

List and prioritize the specific measurable and obtainable objectives.

Discuss project objectives to be accomplished.

What capabilities will be created or enhanced?

Objective: Develop a Clackamas County LEPC Emergency Plan that includes all required elements as presented in the "Oregon Local Emergency Planning Committee Member Manual" and to add planning for right-to-know facilities in Clackamas County.

Measure: An additional 20 - 25 new facilities added to the LEPC Emergency Plan. Add up to 5 facilities that were previously contacted but did not respond.

Match Requirement

Please indicate how you intend to meet the required match.

The Clackamas LEPC will be involved with the contractor providing guidance, materials, and plan review. Over the course of the grant period the committee will be meet two to three times to discuss and review the new plans being added to the LEPC Emergency Plan. The \$4000 soft match will include staff time and travel dollars for contractor staff to attend one meeting in person.

Each LEPC meeting requires a sign-in and minutes.

Proposed HMEP Projects and estimated costs for FY 2020-2021 and FY 2021-2022

If you currently have plans to submit additional projects, or additional phases of a current project in FY 2020-2021 of the HMEP FY 2021-2022 grant performance period, please provide a brief summary of those projects and estimated cost.

Future projects will include training for the LEPC. The cost for an annual training could cost up to \$10,000 depending on the training and the participation.

Justification, comments, and additional information

Provide any additional information regarding why the review committee should approve your project request. Explain if, or how this proposal addresses hazardous materials or the community's right to know.

Clackamas County has a large number of right-to-know facilities, which is 90 plus. It is important that we get as many facilities covered in the LEPC Emergency Plan so that we can provide quality education and training as we move forward.

Questions?

Contact Terry Wolfe, SERC/LEPC Program Coordinator:

HMEP Grants Administrator

503-934-8245 or

terry.wolfe@state.or.us

EXHIBIT B

HMEP TERMS AND CONDITIONS

(aka Pipeline and Hazardous Materials Safety Administration
“Hazardous Materials Emergency Preparedness Grant Program,
Terms and Conditions”)

NOTE: The Hazardous Materials Emergency Preparedness Grant Program Terms and Conditions is paginated with an “B” preceding the page number. The following page numbers constitute Exhibit B, Hazardous Materials Emergency Preparedness Grant Program Terms and Conditions:
B-1 – B-17

**Department of Transportation
Pipeline and Hazardous Materials Safety Administration (PHMSA)
Hazardous Materials Grants**

**Grant and Cooperative Agreement
Terms and Conditions**

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1. Definitions

- a) **Recipient** – A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term “recipient” does not include subrecipients.
- b) **Program Authorizing Official (PAO)** – The PAO is the delegated authority to execute the grant agreement. Should any changes to the scope, budget, schedule, or any other terms become necessary, the PAO in coordination with the AO has the authority to amend the award agreement.
- c) **Agreement Officer (AO)** – The AO has the authority to obligate the Government to the expenditures of Federal funds under this award.
- d) **Grant Specialist (GS)** – The GS is responsible for the daily administration of the award. The GS is NOT AUTHORIZED to change the scope, budget, specifications, and terms and conditions as stated in the award, to make any commitments that otherwise obligates the Government or authorize changes which affect the award budget, delivery schedule, period of performance, or other terms and conditions.
- e) **Recipient Authorized Grantee Official** – The individual with the Recipient organization who has authority to legally and financially bind the organization. It is the Recipient’s responsibility to follow their agency’s policies and procedures for ensuring that authorized officials are up to date, sign the grant agreement, and endorse any prior approval actions.
- f) **Recipient Project Director** – The individual designated by the recipient who is responsible for the technical direction of the program or project.

2. Recipient Responsibilities

In accepting a PHMSA financial assistance award (grant or cooperative agreement), the Recipient assumes legal, financial, administrative, and programmatic responsibility for administering the award in accordance with the laws, rules, regulations, and Executive Orders governing grants and cooperative agreements, and these Award Terms and Conditions, including responsibility for complying with any provisions included in the award.

3. Compliance with Award Terms and Conditions

Submission of a signed Request for Reimbursement (payment request) form constitutes the Recipient’s agreement to comply with and spend funds consistent with all the terms and conditions of this award. If PHMSA determines that noncompliance by the Recipient cannot be remedied by imposing additional conditions, PHMSA may take one or more of the following actions, as appropriate in the circumstances:

- a) Temporarily withhold cash payments pending correction of the deficiency by the Recipient.
- b) Disallow all, or part of, the cost of the activity or action not in compliance.
- c) Wholly or partly suspend or terminate the Federal award.
- d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180.
- e) Withhold further Federal awards for the project or program.
- f) Take other remedies that may be legally available.

4. Order of Precedence

Any inconsistency or conflict in the terms and conditions specified in this award will be resolved according to the following order of precedence:

- a) The Federal statute authorizing this award or any other Federal statutes, laws, regulations or directives directly affecting performance of this award.
- b) Terms and Conditions of this award.

5. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200)

The recipient (and any subrecipients) must comply with these requirements including the cost principles which apply to the recipient, and the audit requirements the recipient must follow. A recipient which expends \$750,000 or more of federal funds, in the recipient's fiscal year, must have an audit conducted.

2 CFR 200 is incorporated by reference into this award

6. Restrictions on Use of Funds for Lobbying, Support of Litigation, or Direct Advocacy

The Recipient and its contractors may not use grant funds for lobbying in direct support of litigation, or in direct advocacy for, or against, a pipeline construction or expansion project.

The Recipient and its contractors may not conduct political lobbying, as defined in the statutes, regulations, and 2 CFR 200.450– “Lobbying,” within the Federally-supported project. The Recipient and its contractors may not use Federal funds for lobbying specifically to obtain grants and cooperative agreements. The Recipient and its contractors must comply with 49 CFR 20, U.S. Department of Transportation “New Restrictions on Lobbying.”

49 CFR 20 is incorporated by reference into this award.

7. Nondiscrimination

The Recipient must comply with Title VI of the Civil Right Act of 1964, which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient must comply with 49 CFR 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964”

49 CFR 21 is incorporated by reference into this award.

In an effort to ensure that all Recipients of PHMSA funds are aware of their responsibilities under the various civil rights laws and regulations, the PHMSA Office of Civil Rights has developed an information tool and training. These documents are found on the PHMSA website at <https://www.phmsa.dot.gov/about-phmsa/civil-rights/grant-recipient-information>. If you should have any questions concerning your responsibilities under the External Civil Rights Program, please contact Rosanne Goodwill, Civil Rights Director, at 202-366-9638 or by e-mail at rosanne.goodwill@dot.gov.

8. Government-wide Debarment and Suspension (Non-procurement)

The Recipient must review the “list of parties excluded from federal procurement or non-procurement programs” located on the System for Award Management (SAM) website before entering into a sub-award. <https://www.sam.gov> No sub-award may be issued to an

entity or person identified in the “list of parties excluded from federal procurement or non-procurement programs.”

2 CFR 1200 “Non-procurement Suspension and Debarment” is incorporated by reference into this award.

The Recipient must inform the PAO if the recipient suspends or debar a sub-awardee.

9. Drug-Free Workplace

The Recipient must comply with the provisions of Public Law 100-690, Title V, Subtitle D, “Drug-Free Workplace Act of 1988,” which require the Recipient to take steps to provide a drug-free workplace. The Recipient must comply with 49 CFR 32, “Government-wide Requirements for Drug Free Workplace (Financial Assistance)” which is incorporated by reference into this award.

10. eInvoicing (PHMSA June 2018)

Recipients of PHMSA grants and cooperative agreements must use the DOT Delphi eInvoicing System.

a) Recipients’ Requirements:

Recipients must:

- i. have internet access to register and submit payment requests through the Delphi eInvoicing system, <https://einvoice.esc.gov/>.
- ii. submit payment requests electronically, and receive payment electronically.

b) System User Requirements:

- i. Contact the assigned grant specialist directly to sign up for the system. PHMSA will provide the recipient’s name and email address to the DOT Financial Management Office. The DOT Financial Management Office will then invite the recipient to sign up for the system.
- ii. DOT will send the recipient a User Account Application form to verify identity. The recipient must complete the form, and present it to a Notary Public for verification. The recipient will return the notarized form as follows:

Via U.S. Postal Service (certified):

DOT Enterprise Services Center
FAA Accounts Payable, AMZ-100
PO Box 25710
Oklahoma City, OK 73125

Via FedEx or UPS:

DOT Enterprise Services Center
MMAC-FAA/ESC/AMZ-150
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169

Note: Additional information, including training materials, and helpdesk support can be found on the DOT Delphi eInvoicing website (<http://www.transportation.gov/cfo/delphi-einvoicing-system.html>)

c) Waivers

DOT Financial Management officials may, on a case by case basis, waive the requirement to register, and use, the electronic payment system. Waiver request forms can be obtained on the DOT eInvoicing website (<http://www.transportation.gov/cfo/delphi-invoicing-system.html>) or by contacting the PHMSA Agreement Officer. Recipients must explain why they are unable to use or access the internet to submit payment requests.

11. Payments

Reimbursement payments will be made after the electronic receipt via the DOTeInvoicing System of “Request for Advance or Reimbursement” (Standard Form SF-270).

- a) Method of payment
 - i) The Government will make all payments under this agreement by electronic funds transfer (EFT), except as provided by paragraph (a)(ii) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.
 - ii) If the Government is unable to release one or more payments by EFT, the Recipient agrees either to –
 - i) Accept payment by check or some other mutually agreeable method of payment; or
 - ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph d. of this clause).
- b) Recipient’s EFT information. The Government will make payment to the Recipient using the EFT information contained in the System for Award Management (SAM) database. If the EFT information changes, the Recipient is responsible for providing the updated information into the System for Award Management (SAM) at: <https://www.sam.gov>
- c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.
- d) Suspension of payment. If the Recipient’s EFT information in the SAM database is incorrect, the Government is not obligated to make payment to the Recipient under this agreement until the correct EFT information is entered into the SAM database. An invoice or agreement-financing request is not a proper invoice for the purpose of prompt payment under this agreement.
- e) Recipient EFT arrangements. If the Recipient has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the SAM database, and the Recipient has not notified the Government of the payment receiving point applicable to this agreement, the Government will make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the SAM database.
- f) Liability for uncompleted or erroneous transfers.
 - i) If an uncompleted or erroneous transfer occurs because the Government used the Recipient’s EFT information incorrectly, the Government remains responsible for –
 - i) Making a correct payment;
 - ii) Paying any prompt payment penalty due; and

- iii) Recovering any erroneously directed funds.

- ii) If an uncompleted or erroneous transfer occurs because the Recipient's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and –
 - i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Recipient is responsible for recovery of any erroneously directed funds; or
 - ii) If the funds remain under the control of the payment office, the Government will not make payment, and the provisions of paragraph d. of this clause apply.

- g) EFT and prompt payment. A payment will have been made in a timely manner in accordance with the prompt payment terms of this agreement if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- h) EFT and assignment of claims. If the Recipient assigns the proceeds of this agreement, the Recipient must require, as a condition of any such assignment, that the assignee register in the SAM database and be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause will apply to the assignee as if it were the Recipient. EFT information that shows the ultimate recipient of the transfer to be other than the Recipient, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph d. of this clause.
- i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Recipient's financial agent.
- j) Payment information. The payment or disbursing office will forward to the Recipient available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Recipient to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph a. of this clause, the Government will mail the payment information to the remittance address contained in the SAM database.

12. Advance Payment

49 CFR § 110.50 authorizes PHMSA to issue advance payments to grant recipients. Recipient must receive prior approval from PHMSA and must meet the required criteria for advance payments be made.

- a) Recipient must possess financial management systems that meet the standards for fund control and accountability as established in 2 CFR 200.302 for awards issued after that date. Recipient must ensure that advance payment requests are limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements in carrying out the purpose of the approved program or project.
- b) Recipient must deposit and maintain advance payments in insured accounts whenever

possible unless the recipient receives less than \$120,000 in federal awards from all sources or can demonstrate the best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances. \$250 for awards issued prior to December 26, 2014.

- c) Recipient submits advance payments based on cash payment needs and not accrued liabilities.
- d) Recipient must remain in compliance with the terms and conditions of their award.
- e) Recipient is not indebted to the United States Government.
- f) Recipient's SAM.gov registration is current and active at the time of the advance payment request.
- g) The recipient maintains supporting documentation in their files and makes them available upon request to PHMSA in order to determine if the costs adhere to the applicable cost principles, statutes and regulations. PHMSA will also monitor to ensure grantee has not requested advance payments beyond immediate disbursing needs and that excess balances were promptly returned to the Treasury.

13. Advance Payment Process

To request an advance payment, log into the DOT Electronic Payment System (Delphi E-Invoicing), create and submit a standard invoice, and complete an SF270 form with the Advance Payment Request. This process is similar to requesting a reimbursement. The grant specialist assigned to your account will receive an email generated from the system with the invoice details.

- a) Advance payments must be fully disbursed (example: checks written, signed, and issued to the payees) within 30 days of the date you receive the advance funds from the U.S. Treasury.
- b) Advance payment requests should be submitted no earlier than 10 business days prior to the beginning of the period for which the funds are requested.
- c) PHMSA will check for all of the following criteria:
 - i. Your award balance is sufficient to meet the advance amount requested.
 - ii. Evaluations will be based on cash payments and not on accrued liabilities.
 - iii. You have satisfied program requirements including submission of required federal financial reports for prior quarters/periods.
 - iv. The request is for allowable expenditures.

14. Adherence to Original Project Objectives and Budget Estimates

- a) The Recipient is responsible for any commitments or expenditures it incurs in excess of the funds provided by an award. Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award, *and only with the written approval of the Agreement Officer or delegate.*

- b) The Recipient must submit any proposed change, that requires PHMSA's written approval, 30 days prior to the requested effective date of the proposed change. PHMSA will not approve any change to the award during the last 30 days of the award period.

15. Prior Approvals

- a) The following expenditures require the Agreement Officer's advance written approval:
 - i) Changes in the scope, objective, or key personnel referenced in the Recipient's proposal.
 - ii) Change in the project period. PHMSA must receive this request no later than 30 calendar days prior to the end of the project period. The Recipient must submit a revised budget indicating the planned use of all unexpended funds during the extension period.
- b) The Recipient must submit a revised financial estimate and plan for i) and ii) above.
- c) The PHMSA will notify the Recipient in writing within 30 calendar days after receipt of the request for revision or adjustment whether the request has been approved.

16. Contracting with Small Businesses, Small Minority-Disadvantaged Businesses, and Small Businesses which are Women-Owned, Veteran-Owned, Disabled Veteran-Owned or located in HubZone Areas

- a) It is the Department of Transportation (DOT) policy to award a fair share of contracts to small businesses, small minority-disadvantaged business, and small businesses which are women-owned, veteran-owned, disabled veteran-owned or located in a HubZone. DOT is strongly committed to the objectives of this policy and encourages all Recipients of its Grants and Cooperative Agreements to take affirmative steps to ensure such fairness on the awarding of any subcontracts.
- b) The Recipient and any Sub-recipients are encouraged to take all necessary affirmative steps to assure that small businesses, small minority-disadvantaged businesses, and small businesses which are women-owned, veteran-owned, disabled veteran-owned, or located in a HUBZone are used when possible.
- c) Affirmative steps include:
 - i) Placing qualified small businesses, small minority-disadvantaged businesses, and small businesses which are women owned, veteran-owned, disabled veteran-owned, or located in a HUBZone on solicitation lists;
 - ii) Assuring that small businesses, small minority-disadvantaged businesses, and small businesses which are women-owned, veteran-owned, disabled veteran-owned or located in a HUBZone are solicited whenever they are potential sources;
 - iii) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small businesses, small minority-disadvantaged businesses, and small businesses which are women-owned, veteran-owned, disabled veteran-owned, or located in a HUBZone;
 - iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and Using the services and assistance of the U.S. Small Business Administration and the Office of the Small and Disadvantaged Business Utilization of the Department of Transportation, as appropriate.

17. Seat Belt Use Policies and Programs

In accordance with Executive Order 13043, the Recipient is encouraged to adopt on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this presidential initiative. For information on how to implement such a program or for statistics on the potential benefits and cost-savings to your company or organization, please visit the Buckle Up America section on NHTSA's website at www.nhtsa.dot.gov. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in Washington, D.C. dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to help with technical assistance, a simple, user-friendly program kit, and an award for achieving the President's goal of 85 percent seat belt use. NETS can be contacted at 1-888-221-0045 or visit its website at www.trafficsafety.org.

18. Ban on Text Messaging While Driving

a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10 and the E.O. For clarification purposes, they may expand upon the definitions in the E.O.

“Driving”-

- i) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- ii) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

“Text messaging” --- means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

b) In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, financial assistance recipients and subrecipients of grants and cooperative agreements are encouraged to:

- 1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving--
 - i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or
 - ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- 2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as--
 - i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

c) *Assistance Awards*. All recipients and subrecipients of financial assistance to include: grants, cooperative agreements, loans and other types of assistance, shall insert the substance of this clause, including this paragraph (c), in all assistance awards.

19. Rights in Technical Data

Rights to intangible property under this agreement are governed in accordance with [2.CER 200.315](#) - “Intangible Property.”

20. Notice of News Releases, Public Announcements, and Presentations

The Recipient must have the PAO’s prior approval for all press releases, formal announcements, or other planned written issuance containing news or information concerning this Agreement before issuance.

21. Violation of Award Terms

If the Recipient has materially failed to comply with any term of the award, the PAO may suspend, terminate, or take other remedies as may be legally available and appropriate in the circumstances.

22. Reporting Fraud, Waste, or Abuse

The DOT Inspector General maintains a toll-free hotline for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. Such reports are kept confidential and callers may decline to give their names if they choose to remain anonymous. The number is: (800) 424-9071.

The mailing address is:
DOT Inspector General Hotline
1200 New Jersey Ave SE
West Bldg 7th Floor
Washington, DC 20590
Email: hotline@oig.dot.gov
Web: <http://www.oig.dot.gov/Hotline>

23. Reporting Grantee Executive Compensation/First Tier Sub-Awards (PHMSA Oct, 2010)

a) *Definitions*. As used in this provision:

“Executive” means an officer or any other employee in a management position.

“First-tier sub-award” means an award issued directly by the prime Awardee to a sub-awardee to provide support for the performance of any portion of the substantive project or program for which the award was received. A sub-award includes an agreement that the prime Awardee or a sub-awardee considers a contract.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Awardee’s preceding fiscal year and includes the following:

i) Salary and bonus.

- ii) Awards of stock, stock options, and stock appreciation rights.
 - iii) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v) Above-market earnings on deferred compensation which is not tax-qualified.
 - vi) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b) **System for Award Management (SAM).** As a recipient of a Federal award you are required to register in the System for Award Management (SAM) at: <https://www.sam.gov>
- c) **Notification to Sub-Awardees.** Awardees are required to report information on sub-awards. The law requires all reported information be made public; therefore, the Awardee is responsible for notifying its sub-awardees that the required information will be made public.
- d) **Reporting of First-Tier Sub-Awards.** By the end of the month following the month of award of a first-tier sub-award with a value of \$25,000 or more, the Awardee shall report the information below at <http://www.fsr.gov> for each first-tier sub-award. (The Awardee shall follow the instructions at <http://www.fsr.gov> to report the data.) If the Awardee, in the previous tax year, had gross income from all sources under \$300,000, the Awardee is exempt from the requirement to report subcontractor awards. If a sub-awardee, in the previous tax year had gross income from all sources under \$300,000, the Awardee does not need to report awards made to that sub-awardee.
- i) Unique identifier (9-digit Data Universal Numbering System (DUNS) number) for the sub-awardee receiving the award, and for the sub-awardee's parent company, if the sub-awardee has a parent company.
 - ii) Name of the sub-awardee.
 - iii) Amount of the sub-award.
 - iv) Date of the sub-award.
 - v) A description of the effort being provided under the sub-award, including the overall purpose and expected outcome or result of the sub-award.
 - vi) Sub-award number (assigned by the Awardee).
 - vii) Sub-awardee's physical address including street address, city, state, country, 9-digit zip code, and congressional district.
 - viii) Sub-awardee's primary performance location including street address, city, state, country, 9-digit zip code, and congressional district.
 - ix) The prime award number (assigned by PHMSA)
 - x) Awarding agency name. (PHMSA)
 - xi) Funding agency name. (PHMSA)
 - xii) Government awarding office code. (56)
 - xiii) Treasury account symbol (TAS) as reported in Federal Assistance Award Data System.

xiv) The applicable North American Industry Classification System (NAICS) code.

e) *Reporting Executive Compensation of Awardee.* If the Awardee, in the previous tax year, had gross income from all sources under \$300,000, the Awardee is exempt from the requirement to its executive compensation.

By the end of the month following the month of receipt of a prime award, and annually thereafter, the Awardee shall report the names and total compensation of each of the five most highly compensated executives for the Awardee's preceding completed fiscal year at <https://www.sam.gov> if, in the Awardee's preceding fiscal year, the Awardee received:

i) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-awards), cooperative agreements, other transaction agreements; and

ii) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-awards), cooperative agreements, other transaction agreements; and

iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

f) *Reporting Executive Compensation of Sub-Awardees.* If the Awardee, in the previous tax year, had gross income from all sources under \$300,000, the Awardee is exempt from the requirement to report the executive compensation of sub-awardees. If a sub-awardee, in the previous tax year had gross income from all sources under \$300,000, the Awardee does not need to report the executive compensation of that sub-awardee.

By the end of the month following the month of a first-tier sub-award with a value of \$25,000 or more, and annually thereafter, the Awardee shall report the names and total compensation of each of the five most highly compensated executives for each first-tier sub-awardee for the sub-awardee's preceding completed fiscal year at <http://www.fsr.gov>, if in the sub-awardee's preceding fiscal year, the sub-awardee received:

i) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-awards), cooperative agreements, other transaction agreements; and

ii) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-awards), cooperative agreements, other transaction agreements; and

iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation

information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

24. 811, Call Before You Dig Program (PHMSA June 2014)

Damage to pipelines during excavation is a leading cause of accidents resulting in serious injuries and fatalities, but these accidents are preventable, and you can help in preventing them.

811 is designated as the national call-before-you-dig number. Every state has a one-call law requiring excavators to have underground utilities marked before digging.

There are five steps to safer digging:

- 1) Make a free call to 811 a few days before digging.
- 2) Wait the required time – which is prescribed in state law but generally two to three days.
- 3) Locate/mark the utilities accurately. (This step applies to underground facility/utility owners.)
- 4) Respect the marks.
- 5) Dig with care.

The recipient is encouraged to adopt the “811, Call Before You Dig” program for its employees when digging on company-owned, leased, or personally-owned property. For information on how to implement such a program please visit the *811 – Call Before You Dig* section of Pipeline and Hazardous Materials Safety Administration’s (PHMSA’s) website at www.phmsa.dot.gov.

25. Access to Electronic and Information Technology (PHMSA DEC 2013)

Each Electronic and Information Technology (EIT) product or service, furnished under this award, must be in compliance with the Electronic and Information Technology Accessibility Standard (36 CFR 1194), which implements Section 508 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794d. The PHMSA Office of Civil Rights will respond to any questions, and will certify Section 508 compliance for the requirement. You can reach the PHMSA Office of Civil Rights at phmsa.civilrights@dot.gov, or 202-366-9638.

26. Combating Trafficking in Persons (PHMSA JULY 2016)

PHMSA may terminate grants, cooperative agreements, or take any of the other remedial actions authorized under 22 U.S.C. 7104(g), without penalty, if the grantee or any subgrantee, engages in, or uses labor recruiters, brokers, or other agents who engage in-

- a) severe forms of trafficking in persons;
- b) the procurement of a commercial sex act during the period of time that the grant, or cooperative agreement is in effect;
- c) the use of forced labor in the performance of the grant or cooperative agreement; or
- d) acts that directly support or advance trafficking in persons, including the following acts:

- i) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.
 - ii) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless-
 - 1) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant, or cooperative agreement; or
 - 2) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action.
 - iii) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment.
 - iv) Charging recruited employees unreasonable placement or recruitment fees, such as fees equal to or greater than the employee's monthly salary, or recruitment fees that violate the laws of the country from which an employee is recruited.
 - v) Providing or arranging housing that fails to meet the host country housing and safety standards.
- 27. Prohibition on Awarding to Entities that Require Certain Internal Confidentiality Agreements (PHMSA FEB 2015)**
- a) The Recipient shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.
 - b) The Recipient shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered herein are no longer in effect.
 - c) The prohibition in paragraph (a) above does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
 - d) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (P.L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the Recipient is not in compliance with the provisions herein.

The Government may seek any available remedies in the event the Recipient fails to comply with the provisions herein.

28. Copyrights

PHMSA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal government purposes:

- a) The copyright in any work developed under a grant, sub award, or contract under a grant or sub award; and
- b) Any rights of copyright to which a Recipient, sub recipient or a contractor purchases ownership with grant support.

29. Reporting

- a) *Mid-year Federal Financial Report (FFR) (SF-425)* – The mid-year FFR provides an update on the status of funds for the first half of the performance period. This report is cumulative. The mid-year FFR is due no later than 5pm Eastern Standard Time (EST), April 30th of the performance year.
- b) *Mid-Year Performance Report* – The mid-year performance report (form OMB Control Number: 2137-0586) provides the status of the activities performed during the first half of the performance period. The mid-year performance report is due no later than 5pm Eastern Standard Time (EST), April 30th of the performance year.
- c) *End of year financial report* – The end of year FFR closes-out the financial reporting for the performance period. An end of year FFR is due no later than 5pm Eastern Standard Time (EST), December 30th, 90 days after the end of the performance period.
- d) *End of year performance report* – The final performance report (form OMB Control Number: 2137-0586) provides the status of the activities performed during the entire performance period. The end of year performance report is due no is due no later than 5pm Eastern Standard Time (EST), December 30th, 90 days after the end of the performance period.

A request for extension of the due date for a mid and end of year reports must be made in writing to PHMSA no later than 30 days before the end of the reporting period. The request must include the reason for the request and the requested due date.

30. American Materials Required (PHMSA August 2017)

If articles, materials or supplies are required: Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States

**AGREEMENT 693JK31940034HMEP
ATTACHMENT 1**

substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired under this award unless PHMSA determines their acquisition to be inconsistent with the public interest or their cost to be unreasonable.

This requirement does not apply:

- 1) to articles, materials, or supplies for use outside the United States;
- 2) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and
- 3) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold.

(End of provision)

EXHIBIT C
REQUEST FOR REIMBURSEMENT (RFR)

HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS GRANT REQUEST FOR REIMBURSEMENT

Agency: _____

Address: _____

Contact: _____

Phone: _____ Email: _____

Fed. Tax ID #: _____ SRA #: _____

Project Title: _____

Period Covering: _____

Budget Category	Expenses Paid This Period	Cumulative Expenses to Date	Project Budget
Travel	\$	\$	\$
Equipment	\$	\$	\$
Supplies	\$	\$	\$
Contractual	\$	\$	\$
Other:	\$	\$	\$
Other:	\$	\$	\$
Total Expenditures	\$	\$	\$
	\$	\$	\$
Grant Funds Requested	\$	\$	\$

Prepared by: _____ Title: _____

Signature of Authorized Signer: _____ Title: _____

Note: Please refer to the budget submitted in the original grant application.

All expenditures must have adequate supporting documentation.

Mail to: Oregon State Police, Office of State Fire Marshal, Attn: Terry Wolfe, 3565 Trelstad Ave SE Salem, OR 97317
For questions, contact Terry Wolfe at terry.wolfe@osp.oregon.gov or 503-934-8245

EXHIBIT D

ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 DEPARTMENT OF TRANSPORTATION

During the performance of this Agreement, the Sub-recipient, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. Compliance with Regulations:

The Sub-recipient shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination:

The Sub-recipient, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. The Sub-recipient shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix D of the Regulations.

3. Solicitation for contractors, including procurements of Materials and Equipment:

In all solicitations either by competitive bidding or negotiation made by the Sub-recipient for work to be performed under a contract, including procurements of materials or leases of equipment, each potential contractor or supplier shall be notified by the Sub-recipient of the contractor’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports:

The Sub-recipient shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State of Oregon or the Pipeline and Hazardous Materials Safety Administration (PHMSA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Sub-recipient is in the exclusive possession of another who fails or refuses to furnish this information the Sub-recipient shall so certify to the State of Oregon or the Pipeline and Hazardous Materials Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance:

In the event of the Sub-recipient’s noncompliance with nondiscrimination provisions of this Agreement, the State of Oregon shall impose sanctions as it or the Pipeline and Hazardous Materials Safety Administration may determine to be appropriate, including but not limited to:

- (a) Withholding of payments to the Sub-recipient under the Agreement until the Sub-recipient complies; and/or,
- (b) Cancellation, termination, or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions:

The Sub-recipient shall include the provisions of paragraphs (1) through (6) in every contract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Sub-recipient shall take such action with respect to any contract or procurements as the State of Oregon or the Pipeline and Hazardous Materials Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Sub-recipient becomes involved in, or is threatened with, litigation with a contract or supplier as a result of such direction, the Sub-recipient may request the State of Oregon to enter into such litigation to protect the interests of the State of Oregon, and in addition, the Sub-recipient may request the United States to enter into such litigation to protect the interest of the United States.

EXHIBIT E

SUBCONTRACTOR INSURANCE REQUIREMENTS.

General.

Sub-recipient shall require its first tier contractor(s) 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 the contractors perform under contracts between Sub-recipient and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. 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 Agency. Sub-recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Sub-recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Sub-recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Sub-recipient permit a contractor to work under a Subcontract when Sub-recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which Sub-recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

Types and Amounts.

1. WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

2. PROFESSIONAL LIABILITY. Not required.

3. COMMERCIAL GENERAL LIABILITY.

Required Not required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

4. AUTOMOBILE LIABILITY INSURANCE.

Required **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

5. POLLUTION LIABILITY. Not required by OSFM.
6. ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, 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.
7. "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 Sub-recipient'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 Agency may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If Agency approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
8. NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Sub-recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
9. CERTIFICATE(S) OF INSURANCE. Sub-recipient 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.

APPENDIX I**Information required by 2 CFR § 200.331(a)(1)**

Federal Award Identification:

- (i) Sub-recipient name (which must match registered name in DUNS): Clackamas County Disaster Management
- (ii) Sub-recipient's DUNS number: 96992656
- (iii) Federal Award Identification Number (FAIN): 693JK31940034HMEP
- (iv) Federal Award Date: 9/18/2019
- (v) Sub-award Period of Performance Start and End Date: From October 1, 2019 to September 30, 2020
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$16,710.00
- (vii) Total Amount of Federal Funds Obligated to the Sub-recipient by the pass-through entity including this Agreement: \$16,710.00
- (viii) Total Amount of Federal Award committed to the Sub-recipient by the pass-through entity: \$16,710.00
- (ix) Federal award project description: Clackamas LEPC Planning
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: USDOT – Pipeline and Hazardous Material Safety Administration
 - (b) Name of pass-through entity: Oregon State Police, Office of State Fire Marshal
 - (c) Contact information for awarding official of the pass-through entity: terry.wolfe@osp.oregon.gov
- (xi) CFDA Number and Name: 20.703 Interagency Hazardous Materials Public Sector Training and Planning Grants
Amount: \$251,600
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: 9.5%



Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

December 5, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of FY2018 Emergency Management Performance Grant Amendment #1
between Clackamas County and the State of Oregon

Purpose/Outcomes	The Emergency Management Performance Grant (EMPG) agreement #18-503 will reimburse Clackamas County Disaster Management (CCDM) for up to 50% of pre-identified program costs. Amendment #1 to EMPG agreement #18-503 totals \$520,030. It increases the existing federal award match from \$175,015 to \$260,015 and the local match requirement from \$175,015 to \$260,015. Clackamas County Disaster Management can meet the required match within the current budget.
Dollar Amount and Fiscal Impact	The grant agreement total value is \$520,030. The grant is a 50% federal share grant that will reimburse CCDM for up to fifty percent of salaries of six employees. The federal share is \$260,015.
Funding Source	FY 2018 Emergency Management Performance Grant via the State of Oregon Military Department, Office of Emergency Management
Duration	Effective November 21, 2019
Previous Board Action	The Board approved this grant on February 7, 2019, agenda item E.1.
Strategic Plan Alignment	1. Coordination and Integration of Planning and Preparedness 2. Ensure Safe, Healthy and Secure Communities
Contact Person	Nancy Bush, Director – Disaster Management Department, 503-655-8665
Contract No.	Grant number 18-503 Amendment #1

BACKGROUND:

County emergency management programs are required by Oregon Revised Statutes 401. The EMPG is a recurring federal grant program providing limited reimbursement of a portion of the costs incurred in operating local emergency management programs. The funds provided are for the development of an all-hazard emergency management capability to promote preparedness, mitigation, response and recovery.

RECOMMENDATION:

Staff respectfully recommends Board approval of the EMPG grant agreement #18-503 Amendment #1 authorizing the director, Nancy Bush, to sign the agreement.

Respectfully submitted,

Nancy Bush, Director

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
EMERGENCY MANAGEMENT PERFORMANCE GRANT
CFDA # 97.042**

AMENDMENT #1

This is Amendment #1 (the “Amendment”) to Grant Agreement #18-503 (the “Agreement”) effective 11/21/2019 between the State of Oregon, acting by and through the Oregon Military Department, Office of Emergency Management (“OEM”), and Clackamas County (“Subrecipient”).

Whereas, OEM intends to provide additional funds to Subrecipient in consideration of increased match funds provided by Subrecipient and the performance of additional activities described in the Work Plan by Subrecipient, now therefore the Parties agree that, in exchange for the mutual covenants and assurances contained herein and other valuable consideration the sufficiency of which is acknowledged and agreed by the Parties,:

THE AGREEMENT IS AMENDED AS FOLLOWS (new language is indicated by bold and underline and deleted language is italicized and bracketed):

1. Section 3 of the Agreement captioned “Grant Funds; Matching Funds” is amended to read as follows:

In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed ~~[\$175,015]~~ \$260,015 in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2018 Emergency Management Performance Grant (EMPG) Program. Subrecipient shall provide matching funds for all Project Costs as described in Exhibit A.

2. Exhibit A: The Section II of the Budget is hereby amended as follows:

II. Budget

There is a 50% cash match required on this grant.

Grant Funds:	<i>[\$175,015]</i>	<u>\$ 260,015</u>
Match Funds:	<i>[\$175,015]</i>	<u>\$ 260,015</u>
Total Budget:	<i>[\$350,030]</i>	<u>\$ 520,030</u>

Signature Page Follows

Personnel Services	[<i>\$0</i>]	<u>\$</u>	-
General Office Supplies	[<i>\$</i>]	\$	-
Other Supplies	[<i>\$</i>]	\$	-
Rent	[<i>\$</i>]	\$	-
Phone	[<i>\$</i>]	\$	-
Other Utilities	[<i>\$</i>]	\$	-
Contractual/Professional Services	[<i>\$</i>]	\$	-
Maintenance Costs - Specify	[<i>\$</i>]	\$	-
Travel/Vehicle Expenses/Mileage	[<i>\$</i>]	\$	-
Training/Workshops/Conferences	[<i>\$</i>]	\$	-
Cost Allocations/De Minimis	[<i>\$</i>]	\$	-
Other - Specify	[<i>\$</i>]	\$	-
Total (Grant plus Match)	[<i>\$0</i>]	<u>\$</u>	-

3. Exhibit D, lines (vi) through (viii) of the Agreement are amended as follows:

(vi) Amount of Federal Funds Obligated by this Agreement: [*\$175,015*] **\$260,015**

(vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement: **[\$175,015]* **\$260,015**

(viii) Total Amount of Federal Award committed to the subrecipient by the pass-through entity: [*\$175,015*] **\$260,015**

This amendment may be executed by the parties in counterparts.

Except as expressly amended above, all terms and conditions of the original Agreement are still in full force and effect. Subrecipient certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the date of its signature below and with the same effect as though made at the time of this amendment. This amendment is effective on the date it is fully executed and approved as required by applicable law

Approved by:

Clint Fella, Mitigation and Recovery Services Section Manager, OEM

Date

Signature of Authorized Subrecipient Official

Date



Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Personal Services Contract with CNA Corporation for
Emergency Fuel Planning Services**

Purpose/ Outcomes	Execution of the contract between Disaster Management and CNA Corporation for Emergency Fuel Planning.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$306,000.00.
Funding Source	UASI Grant and SHSP Grant dollars
Duration	January 31, 2021
Previous Board Action	N/A
Strategic Plan Alignment	Ensure safe, healthy and secure communities
Counsel Review	November 20, 2019
Contact Person	Nancy Bush, 503-655-8665

BACKGROUND:

This is a project for the Urban Area Security Initiative (UASI) region which includes Clackamas, Washington, Multnomah, and Columbia Counties in Oregon and Clark County in Washington. The need for regional fuel planning was a critical finding in the Cascadia Rising 2016 regional exercise. This is an opportunity to work with the entire region to plan for a fuel shortage during a large disaster.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on August 19, 2019. Proposals were opened on September 16, 2019, six (6) proposals were received: Amergent Techs, Inc., CNA Corporation, Ecology and Environment, Inc., Gerlocak Towing, Integrated Solutions Consulting, and PS Energy Group, Inc. After review of the proposal and all necessary documentation, CNA Corporation, was determined to be the successful proposer.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County, approve and execute the Contract between Clackamas County and CNA Corporation for the Emergency Fuel Planning services for a total contract amount not to exceed \$306,000.00.

Respectfully submitted,

Nancy Bush, Director
Disaster Management



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #2067**

This Personal Services Contract (this “Contract”) is entered into between **CNA Corporation** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Department of Disaster Management.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **January 31, 2021**.

- 2. Scope of Work.** Contractor shall provide the following personal services: Emergency Fuel Planning (“Work”), further described in **Exhibit A**. The Work includes an optional Phase 3 – Regional Fuel Management Tabletop Exercise (“Conditional Work”). Contractor’s performance of the Conditional Work is contingent upon the following: (1) County’s written authorization to perform the Conditional Work; and (2) County’s receipt of additional funding, whether from appropriation by the Clackamas County Board of Commissioners or other state or federal funding sources. Contractor shall not perform the Conditional Work without County’s prior written authorization.

- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **three hundred and six thousand dollars (\$306,000.00)** for accomplishing the Work required by this Contract. This sum includes sixty thousand dollars (\$60,000.00) for the optional Conditional Work. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit B.

- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Nancy Bush.

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and Exhibit B.

- 7. Contractor and County Contacts.**

Contractor	County
Administrator: Nicholas Hunter Phone: 703-824-2903 Email: hunter@cna.com	Administrator: Nancy Bush Phone: 503-655-8665 Email: NBush@clackamas.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County 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. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.
- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16 and 21, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

- 15. SEVERABILITY.** If any term or provision of this Contract 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 the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** A) This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (B) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, 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 third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.

23. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

25. WAIVER. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

26. PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. CONFIDENTIALITY. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose

Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

28. KEY PERSONS. Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key

Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

29. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

30. FURTHER ASSURANCES. Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

CNA Corporation

Clackamas County

Authorized Signature

Date

Chair

Date

Name / Title (Printed)

Recording Secretary

1594726-96
Oregon Business Registry #

Approved as to Form:

FBC/Virginia
Entity Type / State of Formation

County Counsel

Date

**EXHIBIT A
PERSONAL SERVICES CONTRACT
STATEMENT OF WORK
EMERGENCY FUEL PLANNING**

**EXHIBIT B
FEE SCHEDULE**